No. 4501

United States
Circuit Court of Appeals
For the Ninth Circuit.

PORT GARDNER INVESTMENT COMPANY,
Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,
Defendant in Error.

Transcript of Record.

Upon Writ of Error to the United States District Court of the Western District of Washington, Northern Division.

Filmer Bros. Co. Print, 330 Jackson St., S. F., Cal.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF COUNSEL.

Attorneys for Plaintiff in Error:

GRINSTEAD, LAUBE & LAUGHLIN, 1407–18 Dexter Horton Bldg., Seattle, Washington.

THOMAS E. DAVIS, 1407–18 Dexter Horton Bldg., Seattle, Washington.

Attorneys for Defendant in Error:

THOMAS P. REVELLE, 310 Federal Building, Seattle, Washington.

JOHN W. HOAR, 303 Federal Building, Seattle, Washington. [1*]

INFORMATION.

To the Honorable, the Judge of the District Court of the United States for the Western District of Washington:

Now comes J. W. Hoar, Special Assistant United States Attorney for the Western District of Washington, who prosecutes for and on behalf of the United States of America, and exhibits this information against one Jewett Sedan Automobile, Washington License No. 178080, Engine No. 44079, and tools and accessories, and Luther L. Neadeau, and against all persons lawfully intervening for their interest therein; which aforesaid property was duly seized in the aforesaid district and divi-

*Page-number appearing at foot of page of original certified Transcript of Record.

sion on the 9th day of August, 1924, by W. M. Whitney, a Deputy Collector of Internal Revenue for the State of Washington, and an officer of the law, and is still held in custody within said district and division in pursuance of such seizure; and thereupon the said Assistant [2] United States Attorney doth allege and give the Court to understand as follows:

That on or about the 9th day of August, 1924, at a point about three miles north of the town of Monroe, near the highway bridge over Skykomish River on Monroe-Duval road, in the County of Snohomish, in the State of Washington, and within the Northern Division of the Western District of Washington, and before said seizure, the said property above described was by Luther L. Neadeau, used in the removal, and for the deposit and concealment of a large quantity of distilled spirits, to wit: moonshine whiskey or distilled spirits, the exact quantity and character of said distilled spirits being to the informant unknown, with intent to defraud the United States of the tax thereon, the said distilled spirits then and there being a commodity for which and in respect whereof a tax theretofore had been and then was imposed by the laws of the United States, which tax had not been paid; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

WHEREFORE, the said Assistant United States Attorney for the Western District of Washington, who prosecutes as aforesaid for the United

States, prays that due process of law may be awarded in this behalf, to enforce the forfeiture of said conveyance, to wit, One Jewett Sedan Automobile, Washington License No. 178080, Engine No. 44079, and tools and accessories, so seized as aforesaid, and to give notice to all persons concerned to appear on the return date of said process to show cause, if any they have, why said forfeiture should not be adjudged.

THOS. P. REVELLE,
United States Attorney.
J. W. HOAR,
Assistant United States Attorney. [3]

United States of America,
Western District of Washington,
Northern Division,—ss.

J. W. Hoar, being first duly sworn on oath, deposes and says:

That he is a duly appointed, qualified and acting Assistant United States Attorney for the Western District of Washington, and as such makes this verification to the foregoing information; that he knows the contents thereof, and that the matters and things therein stated are true to the best of his knowledge, information and belief.

J. W. HOAR.

Subscribed and sworn to before me this 16th day of September, 1924.

[Seal] S. E. LEITCH,
Deputy Clerk, U. S. District Court, Western District of Washington.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Sep. 17, 1924. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [4]

ANSWER.

Comes now Port Gardner Investment Company, a corporation, the claimant herein, intervening for its interests in the above-named automobile, and for answer to the libel of information filed herein, admits, denies and alleges as follows:

I.

On information and belief, denies each and every allegation in said libel of information contained, and the whole thereof, and particularly denies that at the time of the seizure of said automobile the same was being used for the removal, concealment or deposit of a commodity on which a tax had been imposed, for the purpose of defrauding the government of said tax.

Further answering said libel of information, and as an affirmative defense thereto, claimant alleges as follows:

I.

That it is the owner of said Jewett sedan automobile described in said libel, under and by virtue of a certain conditional sales contract, a copy of which contract is set out in the claim which this claimant herewith files in this court, and to which claim reference is hereby made. Claimant fur-

ther states that all and singular the matters and things contained in said claim are true.

WHEREFORE claimant prays that said libel be dismissed, that said car be delivered to claimant, and that claimant have its costs and disbursements herein incurred.

GRINSTEAD, LAUBE & LAUGHLIN and
THOMAS E. DAVIS,
Attorneys for Claimant. [5]

State of Washington,
County of Snohomish,—ss.

Margaret J. Farrell, being first duly sworn, on oath deposes and says:

That she is the secretary of Port Gardner Investment Company, a corporation, the claimant named in the foregoing answer; that she has read said answer, knows the contents thereof and believes the same to be true.

MARGARET J. FARRELL.

Subscribed and sworn to before me this 31st day of October, 1924.

[Seal] OLIVER ANDERSON,
Notary Public in and for the State of Washington,
Residing at Everett, Washington.

Copy received Nov. 4, 1924.

J. W. HOAR.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Nov. 4, 1924. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [6]

CLAIM OF PORT GARDNER INVESTMENT COMPANY, A CORPORATION.

To the Honorable Judges of the United States District Court, for the Western District of Washington, Northern Division:

Comes now Port Gardner Investment Company, a corporation, intervening for its interest in one Jewett Sedan Automobile, License Number 178080, Engine Number 44079, and tools and accessories, one of the libelees above named, and makes claim to said automobile and said tools and accessories, as the same is attached by the United States marshal under a process of the above-entitled court issued at the instance of the libellant above named; and said claimant alleges and avers as follows:

I.

That said claimant is now, and at all times herein mentioned has been, a corporation duly organized and existing under and by virtue of the laws of the state of Washington with its principal place of business in Everett in said state, and authorized to do and doing business as a finance and discount corporation dealing largely in the business of discounting automobile paper.

II.

That on the 15th day of March, 1924, W. S. Guy, doing business as W. S. Guy Motor Sales, was the owner of, and in possession of, the above-described automobile and tools and accessories, and

on said 15th day of March, 1924, said W. S. Guy, doing business as W. S. Guy Motor Sales, delivered said automobile and tools and accessories to one Luther L. Neadeau under a conditional sales contract, retaining title in said vendee until said automobile should be paid for; that a true [7] and correct copy of said conditional sales contract is hereto attached, marked Exhibit "A" and made a part hereof; that after delivery of said automobile and tools and accessories to said Luther L. Neadeau, said W. S. Guy, doing business as W. S. Guy Motor Sales, for value received, assigned, transferred and set over to this claimant all of his right, title and interest in and to said conditional sales contract, and sold, assigned and transferred to said claimant said automobile and tools and accessories; that a true and correct copy of said assignment is endorsed on the back of said conditional sales contract, hereto attached, marked Exhibit "A," and made a part hereof; that said conditional sales contract was by this claimant duly filed for record in the office of the county auditor of Snohomish County, Washington, on the 25th day of March, 1924, under auditor's file number 332282.

III.

That the total purchase price of said automobile to be paid by said Luther L. Neadeau was the sum of $1650.00 exclusive of interest and insurance, of which amount $650.00 was paid in cash, and the remainder, including interest and insurance, of

$1134.40, was to be paid in ten monthly payments of $113.44 each beginning on the 29th day of April, 1924.

IV.

That thereafter said Luther L. Neadeau made three payments as follows:

June 4, 1924, $113.44,
June 17, 1924, 113.44 and
August 1, 1924, 113.44

leaving a balance unpaid of $794.08. That no payments have been made since August 1, 1924, and said vendee is in default, and, as claimant is informed and believes, said vendee is insolvent and unless said car is returned to the claimant herein, said claimant will lose the remainder unpaid. [8]

V.

That neither said W. S. Guy Motor Sales nor this claimant had any knowledge that said automobile was to be used, or was used, in any manner in violation of the laws of the United States or of any state.

VI.

Claimant further states that if said car be returned to it, it is willing and hereby offers to pay into the registry of this court, for the use and benefit of the United States of America, any sum which it may be adjudged said car is worth over and above the amount of the monetary value of claimant's interest in said car; or, in the event said car shall be sold, claimant hereby makes claim, out of the proceeds of said sale, for the amount still

due it on said conditional sales contract hereinbefore mentioned.

WHEREFORE claimant prays to be admitted to defend the libel in the above-entitled cause and that said automobile may be surrendered to it, or that it may have a claim upon the proceeds of any sale thereof in the amount found by the court to be due it under said conditional sales contract.

GRINSTEAD, LAUBE & LAUGHLIN and
THOMAS E. DAVIS,
Attorneys for Claimant. [9]

State of Washington,
County of Snohomish,—ss.

Margaret J. Farrell, being first duly sworn, on oath deposes and says:

That she is the secretary of Port Gardner Investment Company, a corporation, the claimant named in the foregoing Claim of Port Gardner Investment Company, a corporation; that she has read the said claim, knows the contents thereof and believes the same to be true.

MARGARET J. FARRELL.

Subscribed and sworn to before me this 31st day of October, 1924.

[Seal] OLIVER ANDERSON,
Notary Public in and for the State of Washington,
Residing at Everett, Wash.

Copy received Nov. 4, 1924.

J. W. HOAR,
Spec. Asst. U. S. Atty. [10]

EXHIBIT "A."

No. ————————

$1134.40 ————————

CONDITIONAL SALE CONTRACT.

W. S. GUY MOTOR SALES.

Everett, Wash. March 15, 1924. 19——

FOR VALUE RECEIVED, I, the undersigned (hereinafter designated as the vendee), residing in Monroe, No. R. F. D. #1 Street, County of Snohomish, State of Washington, promise to pay to the order of W. S. Buy Motor Sales, the purchase price of Sixteen Hundred and Fifty and No/100 Dollars, interest and insurance added, of which price the sum of Six Hundred Sixty and No/100 dollars is paid in cash, and the balance I agree to pay, together with 8% interest on unpaid balances each month at the following rate ———. Ten payments of $113.44. First payment due April 29th and on the 29th of each and every month until fully paid. Payments include interest and insurance.

The consideration of the above and foregoing contract is the agreement of the said Vendor to sell and deliver to the undersigned Vendee, one Jewett Special, Style 5 pass. Sedan, Car No. 44037, Motor No. 44079 the delivery and receipt of which is hereby acknowledged, upon the conditions hereinbefore and hereinafter set forth, to wit: It is expressly agreed that the title and right of possession in and to the said property shall

remain in said Vendor, its successors or assigns, until the above specified payments, with interest, have been fully made, then the title thereto shall vest in the undersigned Vendee. It is agreed that said property shall not be sold or removed from Snohomish County without the written consent of the said Vendor, its successors or assigns. Vendee agrees to pay all taxes and assessments on said Jewett Automobile before the same become delinquent. It is further agreed that in case of default in the payment of the said principal sum or any of the installments above mentioned as the same shall fall due according to the terms and conditions hereof, or the undersigned Vendee shall sell or encumber, or attempt to sell or encumber, or remove said property from the place above mentioned, without the written consent of Vendor, its successors or assigns, or shall fail to pay taxes or assessments before the same become delinquent, or if any writ issued by any court or by any Justice of the Peace or any distress warrant shall be levied on said property, or if said Vendor, its successors or assigns, shall at any time deem themselves insecure; or in case of any of the conditions of this contract are not strictly complied with by the undersigned Vendee, the said Vendor, its successors or assigns, shall have the right and option to either: [10–A]

FIRST: Terminate this contract, and may enter any premises with or without force of law, wherever the property is, or is supposed to be, and reclaim the same, the possession of these presents

being sufficient authority therefor; and in case the said Vendor, its successors or assigns, shall retake possession of said property, as aforesaid, all moneys paid on purchase thereof shall be retained as liquidated damages for the non-fulfillment of this contract, without relief from valuation or appraisement laws;

SECOND: Said Vendor, its successors or assigns, may declare the whole amount thereof remaining unpaid, due and payable, and enter any premises, with or without force of law, wherever said property is, or is supposed to be, and take possession thereof, the possession of these presents being sufficient authority therefor, and sell said property at public or private sale, with or without notice to any parties interested (and the Vendor, its successors or assigns, may become a purchaser at said sale) and apply the proceeds of said sale upon the whole amount due, together with interest, costs and attorney's fees, as hereinafter provided; and should the proceeds of such sale be insufficient to pay the amount so remaining unpaid as aforesaid, together with interest, costs and attorney's fees and expenses of such sale, the undersigned Vendee agrees to pay the said Vendor, its successors or assigns, the balance so remaining unpaid;

THIRD: The said Vendor, its successors or assigns, may declare the whole amount thereof remaining unpaid due and payable and may commence an action in any court of competent jurisdiction, against the undersigned Vendee, or any

parties interested herein, and all sureties or endorsers hereon, for the amount due under this contract, together with interest, costs and attorney's fees, and have its lien under this contract foreclosed, and the said property sold in the same manner as personal property is sold under mortgage foreclosure, and the proceeds of such sale applied towards the payment of the principal, interest, costs and attorney's fees, and if the proceeds of such sale are not sufficient to pay the full amount of the principal, interest, costs, and attorney's fees, then the said Vendor, its successors or assigns, shall have deficiency judgment for any balance remaining unpaid and that execution may be issued therefor. It is also agreed that in case the undersigned Vendee fails to carry out the terms and conditions of this contract and make the payments as required herein, and in case the said Vendor, its successors or assigns, is required to retake said property or take and sell the same or commence suit or action as herein provided, the undersigned Vendee agrees to pay, in addition to the costs and disbursements provided by statute, such additional sum as may be adjudged reasonable, as attorney's fees and expenses of sale and collection. For valuable consideration each and every party signing or endorsing this instrument, and the installment notes aforesaid, hereby waives presentment, demand, protest and notice of non-payment thereof and binds himself thereon as principal. It is further agreed that the undersigned Vendee shall keep said property insured while this contract is

No. ——. Conditional Contract Between W. S. Guy Motor Sales and ——. Dated —— 19——.

Date.	Paid on purchase price.	Int.	Received by
June 4, '24	$113.44		M. J. F.
June 17, '24	$113.44		M. J. F.
Aug. 1, '24	$113.44		M. J. F.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Nov. 4, 1924. F. M. Harshberger. Clerk. By S. E. Leitch, Deputy. [10–C]

CLAIMANT'S REQUESTED INSTRUCTIONS.

Comes now the above-named claimant, Port Gardner Investment Company, a corporation, and requests the Court to instruct the jury in the above-entitled cause as follows:

GRINSTEAD, LAUBE & LAUGHLIN and
THOMAS E. DAVIS,
Attorneys for Claimant. [11]

I.

Members of the jury, you are instructed to find in favor of the claimant and against the libelant. [12]

II.

You are instructed that under the laws of the United States an automobile cannot be confiscated because intoxicating liquor is found in the automobile. [13]

III.

You are instructed that the so-called tax imposed on intoxicating liquors by the Revenue Laws and Tariff Laws of the United States are penalties and not taxes in the sense that the word "taxes" is used in Section 3450 of the United States Revised Statutes and that before a tax, so called, or penalty, shall be assessed against or collected from any person on account of responsibility for the manufacture or sale of intoxicating liquor, the evidence must first be produced of the illegal manufacture or sale of such intoxicating liquor under hearing had upon the question of such illegal manufacture or sale. [14]

IV.

You are instructed that in this case there is no evidence that there was any hearing had or evidence given of the illegal manufacture or sale of any intoxicating liquor in controversy in this case prior to the time the automobile in question was seized by the Government. [15]

V.

You are instructed in the absence of a hearing and evidence prior to the time of the seizure of the car to determine that the person manufacturing, selling or trafficking in intoxicating liquor found in the car should have a tax assessed against him, said car was not subject to forfeiture. [16]

VI.

You are instructed that in no event can a tax imposed on intoxicating liquor be enforced by forfeiture of an automobile in which the intoxicating liquor was found, but that if such tax is collectible from any-

one, it is collectible only from the person who manufactured, sold or trafficked in such intoxicating liquor. [17]

VII.

You are instructed that the libel in this case charges that the car was being used at the time of the seizure for the removal, concealment and deposit of a commodity, to wit, moonshine whiskey, on which a tax has been imposed, with intent to defraud the Government of such tax. Unless you find that the intent of the driver of the automobile in having the intoxicating liquor in his possession was to defraud the Government of a tax imposed on such liquor, your verdict should be for the claimant. [18]

VIII.

You are instructed that the words "removal, deposit or concealment" as used in the information mean removal, deposit or concealment from a place where the commodity is required by law to be kept so that the Government may there inspect it and collect the tax thereon, such as a distillery, a bonded warehouse, or other place where intoxicating liquor is required by law to be kept until the tax thereon has been paid. [19]

IX.

You are instructed that the burden is upon the United States Government to show that the intoxicating liquor was being removed, deposited or concealed with the intent to defraud the Government of a valid tax imposed upon the same before the automobile in question is subject to forfeiture and that the mere finding of intoxicating liquor in the

car or the transportation of intoxicating liquor in the car, on which intoxicating liquor no tax has been paid, is not sufficient to justify forfeiture of the automobile. [20]

X.

You are instructed that under the laws in force in the United States at the time the car in question was seized, it was unlawful for any person to manufacture or have in his possession intoxicating liquor and that there was no place at which any person manufacturing, selling or trafficking in intoxicating liquor could pay a tax on the same and there was no place where such liquor was required by law to be kept for the purpose of enabling the Internal Revenue Officers to inspect the same, collect taxes thereon and see that Internal Revenue stamps were placed thereon. [21]

XI.

You are instructed that, in this case, the driver of the car at the time it was seized has been charged under the National Prohibition Act with the crime of transporting intoxicating liquor, that he has pleaded guilty to said charge and has been sentenced by this Court and that such action by the United States Government constitutes an election to proceed under the National Prohibition Act and said United States Government cannot now forfeit the automobile in question under the Internal Revenue Laws, to wit, under Section 3450 United States Revised Statutes. [22]

XII.

You are instructed that the burden is upon the

United States Government to prove every material allegation of the charge as stated in the libel or information in this case and that, in addition to proving that intoxicating liquor was in the car at the time it was seized, said United States Government must prove that the same was being concealed or deposited therein with intent to defraud the Government of a tax imposed thereon. [23]

XII½.

You are instructed that there is no presumption that the liquor found in the car at the time it was seized was being removed, deposited or concealed therein with intent to defraud the Government of any tax. [24]

XIII.

You are further instructed that the word "removal" is not synonymous with transportation and that the word removal means only removal from a place where the liquor is required by law to be kept for the purpose of enabling the United States Government to collect the tax thereon and that there is no evidence in this case that said liquor was being removed from such place at the time the car in question was seized. [25]

XIV.

You are instructed that the search-warrant issued to the United States Prohibition Agents was issued in aid of the enforcement of the United States Prohibition Act and not for the purpose of enabling the officers who seized the automobile in question to collect taxes imposed under the Internal Revenue Act and that seizures made under such search-warrant

cannot be the basis of an action to forfeit an automobile under the Internal Revenue Laws. [26]

XV.

You are instructed that under the National Prohibition Act the rights of innocent lienors or vendors who hold valid chattel mortgages or conditional sales contracts on an automobile used for the transportation of intoxicating liquor are protected. That the claimant in this case holds a valid conditional sale contract on the automobile in question. That there is a balance due said claimant of the sum of $794.08. [27]

XVI.

You are instructed that the Internal Revenue Act, to wit, Section 3450, under which the United States Government is proceeding in this case, has been repealed by the National Prohibition Act in so far as it provides for the forfeiture of vehicles used for the transportation of or trafficking in intoxicating liquor. [28]

XVII.

You are instructed that the Internal Revenue Act under which the United States Government is proceeding in this case, to wit, Section 3450, United States Revised Statutes, has been repealed by the National Prohibition Act in so far as the same has any application to the rights of the Government to forfeit the automobile in question and that a forfeiture under said Act cannot be had in the present case. [29]

XVIII.

You are instructed that the automobile in question

in this action cannot be forfeited because the same was being used for the removal of intoxicating liquor. [30]

XIX.

You are instructed that unless the automobile involved in this action was, at the time of the seizure of the same, being used for the deposit or concealment of a commodity on which a tax had been imposed with intent to defraud the Government of such tax, said automobile cannot be forfeited and your verdict must be for the claimant. [31]

XX.

You are instructed that the words "deposit or concealment," as used in the information, mean deposit or concealment of an article at a place other than the place where it is required by law to be kept for the purpose of enabling the United States Government to collect the tax thereon, and that unless the automobile in question was at the time being used for such purpose, said automobile cannot be forfeited in this action. [32]

XXI.

You are further instructed that, under the laws of the United States of America, in force at the time the automobile in question was seized, there was no place where the intoxicating liquor claimed by the Government to have been found in this car was required to be kept for the purpose of enabling the United States Government to collect a tax thereon and your verdict must therefore be for the claimant.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern

Division. Jan. 7, 1925. Ed. M. Lakin, Clerk. By S. M. H. Cook, Deputy. [33]

CLAIMANT'S REQUESTED ADDITIONAL INSTRUCTIONS.

Comes now the above-named claimant, Port Gardner Investment Company, a corporation, and requests the Court to instruct the jury in the above-entitled cause as follows: [34]

XXII.

You are instructed that, in determining whether the automobile in question was being used for the deposit or concealment of a commodity on which a tax had been imposed with intent to defraud the Government of such tax, you should determine whether the natural and probable consequences of the use to which the car was being put at the time alleged in the information would result in defrauding the Government of a tax imposed upon the article alleged to have been concealed or deposited in the car and that unless you believe from the evidence that the Government would have, in the ordinary course of events, collected a tax on such article if the article had not been deposited or concealed in the automobile, your verdict should be for the claimant and you should find the automobile not guilty. [35]

XXIII.

In the present case, unless the acts done by the driver of the automobile in question resulted in de-

priving the Government of taxes, which, except for the doing of such acts the Government would, in all probability, have collected, the doing of such acts as were done in this case would not be any evidence of an intent to defraud the Government of the tax imposed upon the commodity alleged to have been found in the automobile in question; that is, unless the completion of the acts alleged to have been done would result in depriving the Government of a tax which it otherwise would collect, the mere doing of the acts would not be in evidence of any intent to defraud the Government of such tax. [36]

VERDICT.

We, the jury in the above-entitled cause, find the libelee, One Jewett Sedan Automobile, etc., is guilty as charged in the Information herein.

EDLEF H. AHRENS,
Foreman.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Jan. 7, 1925. Ed. M. Lakin, Clerk. By S. M. H. Cook, Deputy. [37]

DECREE.

This cause came on duly and regularly for trial on the sixth day of January, 1925, the libelant appearing by its attorneys Thos. P. Revelle, United States Attorney for the Western District of Wash-

ington, and J. W. Hoar, Assistant United States Attorney for said district; and the Port Gardner Investment Company, a corporation, being represented by Grinstead, Laube & Laughlin, and Thomas E. Davis, its attorneys, and having theretofore filed herein its claim in intervention, asking that it be allowed to establish its claim against said car, to be deducted from the proceeds to be derived from the sale of said automobile, or in the event that said automobile should not be worth more than the amount of its claim, that said automobile be surrendered to said claimant, and claimant having further filed an answer herein to the allegations set forth in the information; and it appearing to the Court that due notice of the seizure of said One Jewett Sedan Automobile, Washington License No. 178080, Engine No. 44079, and tools and accessories, and the time and place of trial and hearing upon the information filed herein, has been given both by publication and posting of the same in accordance with the statutes and laws in such cases made and provided; all of which is shown by the files and records herein, and no other claims having been filed, and all other claimants, if any there be, being in default for failure to appear and defend herein, the case proceeded to trial; the jury having been duly and regularly impaneled and sworn, and evidence having been submitted by the libelant in support of the allegations contained in said information, and witnesses having been cross-examined by the claimant, and evidence having been submitted on behalf of the Port Gardner Investment Company, a corporation, claimant herein,

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Jan. 9, 1925. Ed. M. Lakin, Clerk. By S. M. H. Cook, Deputy. [40]

ORDER EXTENDING TIME FOR PREPARING AND SERVING BILL OF EXCEPTIONS TO AND INCLUDING FEBRUARY 3, 1925.

Pursuant to stipulation of the above-named libelant and the above-named claimant, this day filed herein, and good cause therefor appearing,—

IT IS HEREBY ORDERED that the claimant have until and including the 3d day of February, 1925, in which to prepare and serve its bill of exceptions herein, and the time for preparing and serving said bill of exceptions is hereby extended accordingly.

Done in open court this 9th day of January, 1925.

EDWARD E. CUSHMAN,
Judge.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Jan. 9, 1925. Ed. M. Lakin, Clerk. By S. M. H. Cook, Deputy. [41]

BILL OF EXCEPTIONS.

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[42—1]

BE IT REMEMBERED, that heretofore and on, to wit, January 6, 1925, the above-entitled cause came on regularly for trial in the above-entitled court, and before the Honorable E. E. Cushman, one of the Judges of said Court, sitting with a jury.

The Libelant appearing by Thos. P. Revelle, Esq., United States Attorney, and J. W. Hoar, Esq., Assistant United States Attorney;

The Claimant appearing by Thomas E. Davis, Esq. (of Messrs. Grinstead, Laube & Laughlin), its attorneys and counsel.

And thereupon the following proceedings were had and testimony taken, to wit:

(A jury was duly empaneled to try the cause, and opening statement made by attorney for libelant.)

[43—2]

TESTIMONY OF J. M. SIMMONS, FOR LIBELANT.

J. M. SIMMONS, called as a witness on behalf of the libelant, was duly sworn, and testified as follows:

Direct Examination.

(By Mr. HOAR.)

Q. State your full name. A. J. M. Simmons.

(Testimony of J. M. Simmons.)

Q. What is your business, Mr. Simmons?

A. Federal Prohibition Agent.

Q. How long have you been engaged in that business? A. Since June, 1922.

Q. I will ask you if you are acquainted with one L. L. Neadeau? A. I am, yes, sir.

Q. Do you know the premises occupied by him between here and Everett? A. It is near Monroe.

Q. Near Monroe? A. Yes, sir.

Q. Can you tell the jury more closely, that is, more accurately, where these premises are located?

A. It is the second house on the right-hand side as you come out of Monroe, and on the south, or southwest end of the highway bridge over the Skykomish River about two miles or so out of Monroe.

Q. Did you have occasion to visit those premises on the 9th of August, 1922? A. I did, yes, sir.

Q. Who was with you, if anyone?

A. Agent Kline, and Agent Johnson. [44—3]

Q. Just tell the jury in your own words what transpired on the occasion of that visit with relation to any automobile.

A. We were waiting there for the defendant to return, as we had been told by the defendant's wife that he had gone away and was expected to return shortly. It was about eleven o'clock that the defendant drove into the yard through an open gate from the highway on to his premises in a Jewett sedan. I went over to the sedan and saw a 5-gallon keg in the tonneau of this sedan. On opening the door I could distinctly smell the odor of distilled

(Testimony of J. M. Simmons.)

spirits, and more clearly saw the keg of distilled spirits. I placed the defendant under arrest.

Q. At that time did you have a search-warrant for the premises of Mr. Neadeau?

A. I did, yes, sir.

Q. Did you have any conversation with Mr. Neadeau relative to those distilled spirits at that time?

Mr. DAVIS.—Just a minute. Your Honor, Mr. Neadeau is not on trial, and we object to any conversation with Neadeau; that would not be binding on the car that is on trial.

The COURT.—Neadeau was the conditional vendee?

Mr. DAVIS.—Yes, your Honor.

The COURT.—And the claimant is the vendor?

Mr. DAVIS.—Yes, your Honor.

The COURT.—Objection overruled.

A. Mr. Neadeau stated that he owed some money, around $700,—I do not just recall the exact figure, and that he had [45—4] been bootlegging, trying to pay for the car, and that he was not physically able to—

Mr. DAVIS.—Your Honor, we object to this on the ground that Neadeau is not on trial here. Now, their theory of the case is that the car itself is on trial, and Neadeau cannot bind the car by his statements; it is hearsay.

The COURT.—Objection overruled.

A. Due to the fact that he was physically unable to earn money he was trying to earn money by selling moonshine whiskey to pay for this car.

(Testimony of J. M. Simmons.)

Q. Directing your attention to Libelant's Exhibit 1, I will ask you if you know what the contents of that bottle are, or where they came from?

A. That is a sample of the moonshine whiskey taken from the 5-gallon keg.

Q. Which keg?

A. That was seized in the tonneau of the Jewett sedan.

Q. Do you know, Mr. Simmons, what the contents of that bottle is?

A. It is moonshine whiskey.

Q. Did the defendant Neadeau make any statements as to where he got this liquor at that time, do you recall? A. No, he did not.

Q. Do you know whether or not the defendant Neadeau subsequently pleaded guilty to the possession and transportation of this liquor that you seized at that time, in the Federal Court in the Western District of Washington?

Mr. DAVIS.—We object to that on the ground that the records of the court are the best evidence of their [46—5] contents.

The COURT.—Of course the identity of the man is something the witness can testify to, but just what he pleaded guilty to, you are right, so I will sustain the objection.

Mr. DAVIS.—I have asked the clerk to bring in the records in that case.

The COURT.—The records show the date of the plea and the like. You can examine this wit-

ness as to whether he knows that was the same man that—

Mr. DAVIS.—We will admit that he was the same man.

The COURT.—(Continuing.) —that pleaded guilty.

Mr. DAVIS.—We will admit that the man who pleaded guilty here is the man who was driving the car. But if they go into what he pleaded guilty to, we object because the records are here.

The COURT.—Objection sustained.

Mr. HOAR.—I would like to have the clerk read them into the record.

The CLERK.—I have nothing except the file; I have not the judgment and sentence. I have made an examination of the record and I can testify to what it says.

Mr. DAVIS.—The information may be read into the record as far as we are concerned.

Mr. HOAR.—I will ask that it all be brought in at one time, if there is any question about it, the information, the judgment, the plea, and the whole record.

The CLERK.—I can testify what was done from an examination of the docket. [47—6]

Mr. DAVIS.—I ask that Mr. Leitch go and look up the record; I am willing to take his statements as to what the record shows, other than the information.

Mr. HOAR.—Very well. You may take the witness.

(Testimony of J. M. Simmons.)

Cross-examination.

(By Mr. DAVIS.)

Q. You are a Federal prohibition agent?

A. Yes, sir.

Q. The search-warrant under which you were operating at the time this seizure was made was a search-warrant sued out under the National Prohibition Act, was it not? A. It was, yes, sir.

Q. You had no search-warrant to search the premises to obtain evidence of violation of the Internal Revenue Act, did you?

Mr. HOAR.—Objected to as immaterial and calling for a conclusion of the witness.

The COURT.—Objection sustained.

Q. The warrant which was issued did not charge any violation of the Internal Revenue Act, did it?

A. No.

Mr. HOAR.—I think the warrant would speak for itself.

The COURT.—The question has been answered.

Q. The container of this liquor, you say, was a keg? A. It was, yes, sir.

Q. A 5-gallon keg?

A. A 5-gallon wooden keg, yes, sir.

Q. Was that keg clearly visible when the car drove up? [48—7] A. Not entirely, no, sir.

Q. Could you tell without opening the car that the keg was inside of the car?

A. After I got up to the car where I could look in through the glass, yes, sir, I could see the keg.

(Testimony of J. M. Simmons.)

Q. That is what I mean. A. Yes, sir.

Q. The keg was not concealed in the car in the sense that you could not see it in there without opening the car, was it? A. Oh, no.

Q. There was no hiding of it in the bottom of the car, or covering it up with blankets, or anything like that?

A. A man would have to be unusually tall or either stand on the running-board in order to see it. You could not see it from the—

Q. (Interrupting.) But another person driving along in an automobile, meeting that one, and looking through the glass, would be up plenty high enough to see the keg? A. Yes.

Q. So there was no concealment of the keg in the car in the sense that it could not be seen without opening the car, was there? A. No.

Q. The position of that keg of liquor in the car would not make it any more difficult for an internal revenue officer or prohibition agent to see it there for the purpose of collecting taxes on it, than if it were sitting on a stump or on the ground around there?

Mr. HOAR.—Objected to as argumentative. [49—8]

The COURT.—Objection overruled.

A. Well, I do not know as it is material where it was; it was in the car.

Q. That is what I say.

A. For that reason I seized the car.

Q. The fact it was in the car would not pre-

(Testimony of J. M. Simmons.)

vent officers from seeing it or collecting taxes on it any more than if it had been sitting in the brush, on the ground, or on a stump around there in the same vicinity?

Mr. HOAR.—Objected to as immaterial.

The COURT.—Well, as I understand this question, it is whether it was any more concealed in the car than it would be out in the middle of the road or on the ground?

Mr. DAVIS.—Yes, your Honor.

The COURT.—Objection overruled.

A. It would be more concealed in the car, yes, sir.

Q. A little bit more. That is, if a man were down low, he could not see it, but a tall man standing up, or a man in another automobile, passing it, or up on the level with the glass of the car, could see it just as easily there as he could—

A. (Interrupting.) Oh, no, no.

Q. You said a minute ago, I understood, that you could clearly see it in the car.

A. Providing that—

Q. (Interrupting.) Providing that you were looking at it.

A. And that the car was standing still.

Q. And looking in that direction.

A. And you were looking for such a thing. [50—9]

Q. It was about as visible as a person sitting in the car would be, wouldn't it?

A. Well, no, I wouldn't say that.

(Testimony of J. M. Simmons.)

Q. There were no side curtains or blinds drawn over the glass panels of the car, were there?

A. No.

Q. It was clearly open in that sense.

A. But on the floor of the car.

Q. But the car was open?

A. That is high up. The bottom part of the sedan was metal or wood, or whatever it was constructed of.

Q. Would you say that the liquor in this car was plainly visible? Was it setting upright in the back of the car plainly visible to yourself and the agents who were with you before any arrest was made? A. Yes, sir.

Q. And before you opened the door of the car?

A. Yes, sir.

Q. You have filed an affidavit in the case of United States vs. Luther L. Neadeau, and to which you attached a copy of the search-warrant which was issued in this case. I wonder if you have available an extra copy of that search-warrant?

Mr. HOAR.—The original is in the record.

Mr. DAVIS.—In which record?

Mr. HOAR.—In the file.

Mr. DAVIS.—It is not in this file of United States vs. Neadeau.

Mr. HOAR.—It is in the Commissioner's transcript.

Mr. DAVIS.—Oh, it is? [51—10]

Mr. HOAR.—It should be.

(Testimony of J. M. Simmons.)

Mr. DAVIS.—It is attached to his affidavit and it says it is a correct copy. Is there any question about it?

Mr. HOAR.—Not that I know of. As far as I know it is a correct copy. The original is with the Commissioner's transcript.

Mr. DAVIS.—Where would that be found?

Mr. HOAR.—In the office.

Q. The search-warrant under which you made this arrest and seizure was a search-warrant describing the defendants as John Doe and Richard Roe Johnson, was it not?

A. I do not just recall the names. I know they were *aliases*, or John Does, because I did not know them.

Q. That is your affidavit, isn't it? (Handing witness document.)

The COURT.—We do not care which particular member of the Doe family it was.

Mr. DAVIS.—The only thing I wanted to do was to identify the search-warrant.

Q. Now, that is a correct copy of the search-warrant, isn't it? You have stated in this affidavit that it is.

A. As far as I know. That is a copy of the records as they are in the United States Attorney's office; that is the search-warrant.

Mr. DAVIS.—I would like to have this copy of the search-warrant introduced in evidence.

Mr. HOAR.—I think the original ought to go in,

(Testimony of J. M. Simmons.)

if anything. I do not know whether that is an exact copy or not. [52—11]

The COURT.—The case looks like it will run over to-morrow, and you can compare that with the original.

Mr. HOAR.—I have no objection if it is a correct copy.

Mr. DAVIS.—If it is not a correct copy, I will ask to have it made a correct copy.

The COURT.—You may compare that at five o'clock and raise your objection in the morning. Is that satisfactory?

Mr. HOAR.—Yes. I have no doubt but what that is a correct copy, but I do not know.

The COURT.—It will be admitted then.

(Document above referred to admitted in evidence as Claimant's Exhibit "A.")

Q. Were you present when this sample was taken out of the keg? A. Yes, sir.

Q. Did you take it out yourself?

A. Mr. Kline did.

Q. Did you drill a hole through the keg, or how did you open the keg?

A. No, there is a cork in it.

Q. There was a cork in it? A. Yes.

Q. Was the keg full? A. Yes.

Q. Approximately full?

A. Approximately full.

Q. Do you know what became of that keg?

A. I could not say. [53—12]

Q. This is all that has been saved of it?

(Testimony of J. M. Simmons.)

A. Yes, sir.

Q. The rest has been destroyed?

A. That was destroyed after the completion of the Neadeau case.

Q. Where is Mr. Neadeau's residence out there? Is it in town, or on a farm, or out in the country, in the woods, or where is it?

A. It is out in the country.

Q. A little farm out there; a small tract of about ten acres?

A. Yes, sir. It is not his; I understand it is his mother's.

Q. His mother's home?

A. That is what I understand.

Q. His wife was there that day. Was his mother there?

A. No. There was a brother-in-law, a sister-in-law, or some relations there; a young couple.

Q. You did not know Mr. Neadeau's name prior to the time you went out there?

A. I did not know it, no, sir.

Mr. DAVIS.—I think that is all.

Redirect Examination.

(By Mr. HOAR.)

Q. If I understand, Mr. Simmons, you could not see this keg until you got up close to the car, and you could look through the glass?

A. That is when I saw it.

Mr. HOAR.—That is all.

(Witness excused.) [54—13]

TESTIMONY OF JAMES A. JOHNSON, FOR LIBELANT.

JAMES A. JOHNSON, called as a witness on behalf of libelant, was duly sworn and testified as follows:

Direct Examination.

(By Mr. HOAR.)

Q. State your full name.

A. James A. Johnson.

Q. What is your business, Mr. Johnson?

A. Federal prohibition agent.

Q. How long have you been engaged in that occupation? A. Two years *last* last September.

Q. Are you acquainted with Luther L. Neadeau?

A. Well, I could not say that I am acquainted with him. I was present when he was arrested?

Q. You were present at the premises near the city of Monroe?

A. Just this side of the bridge.

Q. At the time Mr. Simmons has testified to?

A. Yes, sir.

Q. Did you see any distilled spirits, of any kind in this car at that time?

A. I was searching the premises back in the house, and we had been there something over an hour. I came around to the front, and I saw this sedan sitting down in front of the house. I asked the boys what they had, and they said they had brought in this car with a keg of whiskey. It was about forty feet,—thirty or forty feet from the

(Testimony of James A. Johnson.)

front of the house, and I walked down to the car, and the door was standing open, and this 5-gallon keg of whiskey was sitting in a gunny-sack in the bottom of the car. [55—14] I opened up the top of it,—took the cork out of the bung-hole and stuck my finger down it and tasted it to see what it was. I usually taste whiskey when we seize it, and it was moonshine whiskey. The keg was approximately full.

Q. Fit for beverage purposes, was it?

A. It was such as they use.

Q. It was fit for beverage purposes within the contemplation of the law, as you understand the law?

A. Yes, as I understand the law.

Q. Did you have any conversation with Mr. Neadeau relative to this?

A. No. I drove down in another machine. I offered to drive the machine to Everett. He said he wanted to go to Everett. I heard him make the statement that he had purchased it in Everett, and there was something due on it, some considerable sum of money was due. There was a question of who was going to drive it, and I offered to drive it, and he objected to me driving it. He said he would drive it himself, and he drove it to Everett. I think I drove in with another man in a car that we had hired.

Q. Referring to Libelant's Exhibit 1, for identification, do you know anything about the contents of that? A. Mr. Kline told me this was—

(Testimony of James A. Johnson.)

Q. (Interrupting.) Were you present—

Mr. DAVIS.—Just a minute.

A. Not when it was taken out, no.

Mr. HOAR.—I will withdraw the question. Take the witness. [56—15]

Cross-examination.

(By Mr. DAVIS.)

Q. When you came to the car, the door was open?

A. The door was standing ajar, yes, sir.

Mr. DAVIS.—I think that is all.

(Witness excused.)

TESTIMONY OF C. W. KLINE, FOR LIBELANT.

C. W. KLINE, called as a witness on behalf of libelant, was duly sworn and testified as follows:

Direct Examination.

(By Mr. HOAR.)

Q. State your name, please?

A. C. W. Kline.

Q. What is your business, Mr. Kline?

A. Federal prohibition agent.

Q. As such what are your duties?

A. To take charge of all the liquor seized by the Government and maintain it until they come into court, and analyze it for alcoholic content.

Q. Mr. Kline, directing your attention to Libelant's Exhibit 1, for identification, I will ask you

(Testimony of C. W. Kline.)

to examine that and state whether or not you have seen the contents of that bottle before?

A. I have. I put the contents in it out of the 5-gallon keg that we seized, drew this quart out to see what it was. It was 100 proof, 50 alcohol, fit for beverage purposes.

Q. You analyzed the contents of it? [57—16]

A. Yes, sir.

Q. Were you present at the time that liquor was found? A. I was.

Q. Did you see the container of that liquor in the automobile at the time?

A. I saw the automobile come up with it, and I went over and examined it and found the 5-gallon keg in a sack in the machine, and then helped to take it out.

Q. Did you have any conversation with Mr. Neadeau at that time with relation to this liquor, do you recall?

A. He only made the remark to me that when he seen me he knew it was all off; he knew it was all off as soon as he had seen me.

Q. Did he know you before?

A. He had seen me before, yes.

Mr. HOAR.—You may take the witness.

Mr. DAVIS.—I have no questions.

(Witness excused.) [58—17]

TESTIMONY OF WALLACE C. MILLER, FOR LIBELANT.

WALLACE C. MILLER, called as a witness on behalf of libelant, was duly sworn and testified as follows:

Direct Examination.

(By Mr. HOAR.)

Q. State your full name?

A. Wallace C. Miller.

Q. What is your business, Mr. Miller?

A. Assistant cashier of customs.

Q. As such what are your duties?

A. I have charge of the accounts, of the collections.

Q. Of what, Mr. Miller?

A. Collections of all kinds that the customs have.

Q. If customs taxes or internal revenue taxes are paid upon imported liquors, distilled spirits, do they come through your office?

A. Yes, sir.

Mr. DAVIS.—Now, your Honor, we object to that on the ground that there is no evidence this liquor was imported.

The COURT.—Objection overruled.

Q. If they were paid, would you by virtue of your office, know of their having been paid?

A. Yes, sir.

Q. I will ask you if your books show that one Luther L. Neadeau has paid any customs tax, or

(Testimony of Wallace C. Miller.)

internal revenue tax to your office within the last three years? A. No, sir.

Q. Have any taxes been paid by anybody on intoxicating liquor in your office within the last three years? [59—18]

A. No, sir.

Mr. HOAR.—You may take the witness.

Cross-examination.

(By Mr. DAVIS.)

Q. Do you take care of the collection of internal revenue taxes as well as customs?

A. On imported liquors, yes, we would.

Q. Only on imported liquors? A. Yes.

Q. Not on liquors manufactured in this country?

A. No, sir.

Q. You would have no way from your records of telling even if it were imported liquors, and had been imported through any other port than one in the State of Washington, whether such customs had been paid or not? A. No, sir.

Mr. DAVIS.—That is all.

(Witness excused.) [60—19]

TESTIMONY OF W. M. WHITNEY, FOR LIBELANT.

W. M. WHITNEY, called as a witness on behalf of libelant, was duly sworn and testified as follows:

Direct Examination.

(By Mr. HOAR.)

Q. State your full name.

(Testimony of W. M. Whitney.)

A. W. M. Whitney.

Q. What is your business, Mr. Whitney?

A. I am a Federal prohibition officer, and deputy collector of revenue for the State of Washington under Burns Poe.

Q. Mr. Whitney, I will ask you if you have examined the books of Burns Poe with relation to the payment of internal revenue taxes upon domestic liquors? A. Yes, sir.

Q. Do you know whether or not one Luther L. Neadeau has paid any taxes in Tacoma within the past three years? A. I know he has not.

Q. Has anybody paid any taxes within that time?

A. No, sir, none have. That is, on liquors produced in the State of Washington, distilled spirits.

Q. I will ask you if you are familiar with this particular case of Mr. Neadeau?

A. I saw the keg of moonshine which was brought to the office. I am familiar with this (indicating) bottle of moonshine.

Q. Directing your attention to Libelant's Exhibit 1 for identification, I will ask you if you have personally sampled the contents of this bottle?

A. Yes.

Q. Do you know what it is? [61—20]

A. Moonshine or illicit whiskey, as we call it, moonshine as distinguished from bonded liquor.

Q. Is it fit for beverage purposes?

A. Yes, sir.

(Testimony of W. M. Whitney.)

Mr. HOAR.—At this time we offer Libelant's Exhibit 1.

The COURT.—It will be admitted.

(Bottle with contents above referred to admitted in evidence as Libelant's Exhibit 1.)

Mr. HOAR.—That is all.

Cross-examination.

(By Mr. DAVIS.)

Q. You say you are a deputy collector of revenue?

A. Yes, sir.

Q. Of internal revenue? A. Yes, sir.

Q. Have you ever collected any revenue taxes?

A. I have not.

Q. How extensive is Burns Poe's books as to territory; what territory does his office cover?

A. I know it covers the State of Washington.

Q. If the liquor in question here had a tax paid on it outside of Burns Poe's district, his record would not show anything about that? A. No.

Q. Where in the State of Washington is it possible for a man to pay a tax on intoxicating liquors such as this?

A. It is not possible now without a permit from the Commissioner of Internal Revenue. [62—21]

Q. It is not possible to pay the tax?

A. It is not legal to manufacture without a permit from the Collector,—Commissioner of Internal Revenue.

Q. Then, he would not give you a permit to manufacture that kind of stuff, would he?

(Testimony of W. M. Whitney.)

A. It would be within his province under the law if he deemed that it was,—if the liquor in bonded distilleries had reached a point where it was necessary.

Q. Where it was necessary? A. Yes.

Q. Has anyone in the State of Washington, to your knowledge, a permit to manufacture liquor?

A. Not distilled spirits, they have no permits; it is a bone dry state.

Q. So at present there would be no way which a man in the State of Washington could pay a tax on such stuff, even if he wished to?

A. Not without a permit, and as this is a bone dry state a permit would not be issued him.

Q. In the State of Washington? A. Yes.

Q. That is, the Federal authorities—

A. (Interrupting.) For beverage purposes.

Q. The Federal authorities would not permit anyone to manufacture liquor in this state where it conflicts with the state law?

A. They probably would not give such a permit. But permits are not granted anywhere because the quantity of liquor already in the bonded warehouses—

Q. (Interrupting.) So that so far as revenue purposes are [63—22] concerned, there is no way by which the Government can profit from the manufacture of such liquor as that in question in the State of Washington, or from the traffic of it in the State of Washington, is there, by levying or collecting a tax on it?

(Testimony of W. M. Whitney.)

A. Well, not at this particular time.

Q. And at the time this liquor was seized the situation was the same as it is now?

A. Yes, sir, there were no permits in this state at that time.

Q. You were not present at the time this seizure was made, Mr. Whitney? A. No.

Mr. DAVIS.—I think that is all.

Mr. HOAR.—That is all.

(Witness excused.)

Mr. HOAR.—Have you those records, Mr. Leitch?

Mr. LEITCH.—In the Neadeau case?

Mr. HOAR.—Yes.

Mr. DAVIS.—There was just one more question I wanted to ask Mr. Whitney.

The COURT.—Very well. [64—23]

W. M. WHITNEY resumed the stand.

Cross-examination.

(By Mr. DAVIS.)

Mr. Whitney, the testimony of the United States officers up to the present time indicate that the liquor of which Exhibit 1 is a sample, was found in a 5-gallon keg in the rear of the automobile in question up near Monroe, Washington, on the 9th day of August, 1924? Will you tell the jury whether the fact that that liquor was in the car at the particular time in any way deprived the Government of any tax which it could have collected, or would have collected if the liquor had been anywhere else in

(Testimony of W. M. Whitney.)

the State of Washington at the time this seizure was made.

Mr. HOAR.—Objected to, if the Court please, as calling for a conclusion of the witness.

Mr. DAVIS.—This gentleman was called as an expert first on the internal revenue tax and customs tax.

The COURT.—Read the question.

(Question read.)

The COURT.—Objection sustained.

Mr. DAVIS.—That is the whole theory of the case, that by reason of its being in there there was an intent to deprive the Government of the tax.

The COURT.—The question you are asking is whether the verdict should be "guilty" or "not guilty."

Mr. DAVIS.—That probably is a conclusion for the jury to arrive at.

The COURT.—Objection sustained. [65—24]

Mr. DAVIS.—I would like to have an exception.

The COURT.—Exception allowed.

Q. If your office found intoxicating liquor any place in the State of Washington and in anyone's possession, would you be able to collect any taxes on that liquor for the Government?

A. We assess them, yes, sir.

Q. Have you ever done that?

A. If it is distilled spirits, oh, yes; if it is distilled spirits or beer or wine.

Q. You would have the power to assess a tax?

A. When we write our report to Washington, we

(Testimony of W. M. Whitney.)

always write in so much assessments, and later on a hearing is held before the Commissioner of Internal Revenue in Tacoma and an assessment is made. But generally, if they have no property we wipe off the assessment; if they have property and we think we can collect the assessment, we proceed.

Q. You levy an assessment?

A. We do not have power to levy it, but the Commissioner of Internal Revenue does after this hearing. Usually there is a compromise settlement.

Q. In other words, when you find a man manufacturing distilled spirits, or engaged in the business of selling distilled spirits, you operate under that section of the statute which provides for a levy of an assessment, or a levy of a tax, whichever you want to call it, against the man, do you not?

A. Your question was not with reference to section 3450. I was answering the question under the Internal— [66—25]

Mr. HOAR.—I would like to object to that question. It seems to me we are getting off into ramifications—

The COURT.—Objection sustained.

Mr. DAVIS.—I want to see whether there is any machinery—

The COURT.—It is all a matter of law.

Mr. DAVIS.—It may be a matter of law, your Honor, in a way, but when it comes to a question of an intent to deprive the Government of some-

thing which the Government could not possibly get, no matter what the man did, I think it becomes material as to whether there is any machinery, or if there is any machinery to so operate. Now, as I understand the law when a man is found manufacturing or selling distilled spirits, the Government officers have the authority to start a proceeding in which notice is issued and a hearing had to levy a penalty, which the Supreme Court of the United States calls a penalty, and not a tax, against the man, not against the particular distilled spirits, and then they can levy execution, after notice and hearing, on any property which the man has and proceed to collect the tax. That is the only way in which a tax can be collected.

The COURT.—I do not think these are questions for the jury to be puzzled with.

Mr. DAVIS.—Possibly they are not, your Honor, but in order to arrive at what his intent was,—attempt to deprive the Government of a tax, as they call it, I think it becomes material to show whether the Government has any machinery, and if so, what this machinery is. [67—26]

The COURT.—I do not see its relevancy. Objection sustained.

Mr. DAVIS.—Exception, please.

The COURT.—Allowed.

Mr. DAVIS.—I think that is all.

(Witness excused.)

Mr. HOAR.—The Government rests. Just one other question. This record here, where is it?

(Testimony of S. E. Leitch.)

Mr. DAVIS.—That information? I think Mr. Leitch can state to the jury as to what the record shows as to the sentence and the pleas. I do want the information to be put in evidence, or read into the record; I do not care which.

The COURT.—Do you want Mr. Leitch sworn?

Mr. HOAR.—Yes, I would like to have Mr. Leitch sworn. [68—27]

TESTIMONY OF S. E. LEITCH, FOR LIBELANT.

S. E. LEITCH, called as a witness on behalf of libelant, was duly sworn, and testified as follows:

Direct Examination.

(By Mr. HOAR.)

Q. State your name, please. A. S. E. Leitch.

Q. Will you read the information filed in this case? How many counts were there in that information? A. There were three counts.

Q. There are only two counts upon which there was a record of conviction. A. Yes, that is true.

Q. Will you read the two counts involved here?

A. Omitting the title?

Q. Yes, and the number.

No. 8879.

"UNITED STATES OF AMERICA,
Plaintiff,

vs.

L. L. NEADEAU,
Defendant.

INFORMATION.

Be it remembered, that Thomas P. Revelle, attorney of the United States of America for the Western District of Washington, who for the United States, in its behalf, prosecutes in his own person, comes here into the District Court of the said United States for the district aforesaid on this 27th day of September in this same term, and for the United States, gives the court here to understand and be informed that:

COUNT ONE.

That on the 9th day of August in the year of our Lord One Thousand Nine Hundred Twenty-four about three [69—28] miles north of the town of Monroe in the Northern Division of the Western District of Washington, and within the jurisdiction of this court, L. L. Neadeau, whose true Christian name is to the said United States attorney unknown, then and there being or then and there knowingly, willfully, and unlawfully have and possess certain intoxicating liquor, to wit: Five (5) gallons of a certain liquor known

as distilled spirits, then and there containing more than one-half of one per centum of alcohol by volume, and then and there fit for use for beverage purposes, a more particular description of the amount and kind whereof being to the said United States Attorney unknown, intended then and there by the said L. L. Neadeau for use in violating the Act of Congress passed October 28, 1919, known as the National Prohibition Act, by selling, bartering, exchanging, giving away and furnishing the said intoxicating liquor, which said possession of the said intoxicating liquor by the said L. L. Neadeau, as aforesaid, was then and there unlawful and prohibited by the Act of Congress known as the National Prohibition Act; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

And the said United States Attorney for the said Western District of Washington, further informs the Court:

COUNT TWO.

That on the 9th day of August, in the year of our Lord One Thousand Nine Hundred and Twenty-four, and [70—29] about three miles north of the town of Monroe in the Northern Division of the Western District of Washington, and within the jurisdiction of this court, L. L. Neadeau, whose *two* Christian name is to the said United States Attorney unknown, then and there being or then and there knowingly, willfully, and unlawfully,

(Testimony of S. E. Leitch.)

transported certain intoxicating liquor, to wit: Five (5) gallons of a certain liquor known as distilled spirits, then and there containing more than one-half of one per centum of alcohol by volume, and then and there fit for use for beverage purposes, a more particular description of the amount and kind whereof being to the said United States Attorney unknown, and which said transporting by the said L. L. Neadeau, as aforesaid, was then and there unlawful and prohibited by the Act of Congress passed October 28, 1919, known as the National Prohibition Act; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America. Thomas P. Revelle, United States Attorney, J. W. Hoar, Special Assistant United States Attorney."

I was mistaken; there are only two counts in the information.

Q. Did Mr. Neadeau plead in that case?

A. He did.

Q. What does the record show his plea to be?

A. It shows that on December 1st, 1924, he entered a plea of guilty to each count.

Q. That was in the Western District of Washington? A. Yes. [71—30]

Mr. HOAR.—That is all.

Cross-examination.

(By Mr. DAVIS.)

Q. What does the record show as to the sentence given?

(Testimony of S. E. Leitch.)

A. He was fined $100 on Count One, and $150 on Count Two on the date of his plea.

Mr. DAVIS.—I think possibly it can be stipulated between the United States Attorney and myself that the automobile in question in this case which the Government is now seeking to forfeit is the same car that was used in the transportation of the liquor mentioned in the second count of the information which has just been read. That is correct, is it not, Mr. Hoar?

Mr. HOAR.—Yes.

The WITNESS.—I might add this information was filed in the clerk's office on September 27th, 1924.

Mr. DAVIS.—That is all.

Mr. HOAR.—That is all.

(Witness excused.)

Mr. HOAR.—Will you admit the man that pleaded guilty was the same man that was arrested with the car?

Mr. DAVIS.—Yes, we admit that the man who pleaded guilty in that action, or to those charges which have just been read, is the man whom the witnesses have been testifying was driving the car at the time the United States officers found the liquor in question in the back of the car.

Mr. HOAR.—The Government rests. [72—31]

Mr. DAVIS.—We have on file in this case a stipulation as to certain facts. I think Mr. Hoar and I should straighten this stipulation up as there

are certain things that were stipulated here that have since been withdrawn.

I desire to read this stipulation to the jury at this time.

"In the District Court of the United States for the Western District of Washington, Northern Division.

No. 8861.

UNITED STATES OF AMERICA,

Libelant,

vs.

ONE JEWETT SEDAN AUTOMOBILE, Washington License No. 178080, Engine Number 44079, and Tools and Accessories, and LUTHER L. NEADEAU,

Libelees,

PORT GARDNER INVESTMENT COMPANY, a Corporation,

Claimant.

STIPULATION.

It is hereby stipulated and agreed, by and between the United States of America, by Thos. P. Revelle, United States Attorney, and John W. Hoar, assistant United States attorney, and Port Gardner Investment Company, a corporation, the above-named claimant, by Messrs. Grinstead, Laube & Laughlin and Thomas E. Davis, its attorneys, that the following facts are admitted to be true and that no proof shall be required of said facts at the trial of the

above-entitled cause, either party being at liberty to offer testimony as to any other or additional facts not herein mentioned.

First. That the Port Gardner Investment Company is a [72½—32] corporation, organized and existing under and by virtue of the laws of the State of Washington, with its principal place of business in the city of Everett, in said state, and that it is authorized to do and is doing, business in the said city of Everett as a finance and discount corporation, dealing largely in the business of discounting automobile paper.

Second. That on the 15th day of March, 1924, W. S. Guy, doing business under the assumed or trade name of W. S. Guy Motor Sales, in the city of Everett, Washington, and engaged in the business of dealing in automobiles, was the owner of, and in possession of, the Jewett Sedan automobile involved in this case and the tools and accessories thereunto belonging, and on said day delivered said automobile and tools and accessories to Luther L. Neadeau, under a conditional sales contract, a copy of which is attached to the claim of claimant on file herein.

Third. That at the time of delivery of said automobile to said Luther L. Neadeau, and at the time of the execution of said conditional sales contract said W. S. Guy did not know, and had no notice or knowledge, that the said Luther L. Neadeau intended to use or would use said automobile for the transportation, deposit or concealment of intoxi-

cating liquors, or in any other illegal manner and said W. S. Guy was not advised and had no knowledge or notice, prior to the time said automobile was seized by the officers of the United States Government and that said automobile was being used, or had been used, or was intended to be used in any illegal manner.

Fourth. That the total purchase price of said [73—33] automobile, to be paid by said Luther L. Neadeau, was the sum of Sixteen Hundred Fifty Dollars ($1650.00), exclusive of interest and insurance, of which amount Six Hundred Fifty Dollars ($650.00) was paid in cash, and the remainder, including interest and insurance, amounted to Eleven Hundred Thirty-four and 40/100 Dollars ($1134.40), which was to be paid in ten monthly installments, beginning April 29th, 1924, of One Hundred Thirteen and 44/100 Dollars ($113.44) each.

Fifth. That after delivery of said car said Luther L. Neadeau made three payments as follows:

June 4, 1924 $113.44
June 17, 1924, 113.44
Aug. 1, 1924, 113.44

and that the balance remaining unpaid at the time said car was seized, and now remaining unpaid, is the sum of Seven Hundred Ninety-four and 08/100 Dollars ($794.08).

Sixth. That after the delivery of said car to said Luther L. Neadeau said W. S. Guy Motor Sales assigned the conditional sales contract herein-

above mentioned to Port Gardner Investment Company, the claimant herein, a copy of which assignment is attached to the claim of the claimant herein, and that said Port Gardner Investment Company is now, and at all times since the date of said assignment, the owner of said conditional sales contract and of all the rights and property therein mentioned given it by said assignment; nor any of its officers, agents or employees knew, at the time of the taking of said assignment, or at any other time prior to the time of the seizure of said automobile by the United States Government that said automobile was being used, or was intended to be used, in any illegal manner. [74—34]

THOS. P. REVELLE,
J. W. HOAR,
Attorneys for Libelant.

GRINSTEAD, LAUBE & LAUGHLIN and
THOMAS E. DAVIS,
Attorneys for Claimant."

Now, if your Honor please, I have a copy of the conditional sales contract certified by the County Auditor of Skagit County as a true and correct copy of the conditional sales contract on file in his office, which I would like to have marked as Exhibit "B," and offer it in evidence in this case.

The COURT.—It will be admitted.

(Certified copy above referred to marked Claimant's Exhibit "B," and admitted in evidence.)

TESTIMONY OF L. L. NEADEAU, FOR CLAIMANT.

L. L. NEADEAU, called as a witness on behalf of the claimant, was duly sworn and testified as follows:

Direct Examination.

(By Mr. DAVIS.)

Q. Your name is L. L. Neadeau?

A. Yes, sir.

Q. You are the person who was driving the automobile in question, being the Jewett sedan?

A. Yes, sir.

Q. On the 9th day of August, 1924? A. Yes.

Q. At the time it was seized?

A. Yes. [75—35]

Q. At that time, Mr. Neadeau, you had some intoxicating liquor in the car? A. Yes, sir.

Q. Some such stuff as this (referring to Libelant's Exhibit 1)? A. Yes.

Q. And have pleaded guilty? A. Yes.

Q. To having transported it and having it in your possession? A. Yes, sir.

Q. In placing that intoxicating liquor in that car or in hauling it around from wherever you obtained it to the place where it was seized, did you have in mind any intent to deprive the Government of any taxes? A. No, sir.

Mr. HOAR.—Just a minute. I object to that question as calling for a conclusion of the witness, what he had in mind. He can state what he did.

(Testimony of L. L. Neadeau.)

The COURT.—I think he is entitled to deny categorically the allegation that he had this fraudulent purpose. Objection overruled.

Q. Did you know at that time that there was any tax on any such liquor as you had in the car?

A. I did not, no.

Mr. HOAR.—That is objected to as immaterial; he is presumed to know the law.

Mr. DAVIS.—It is quite a presumption for a layman, your Honor. I confess I am of the opinion there is not any law providing for a tax on it, but that is a [76—36] question on which attorneys differ.

Mr. HOAR.—I object to the attorney's remarks there.

The COURT.—Objection overruled. It is a mixed question of law and fact.

Q. You have already answered that?

A. I didn't know there was any such thing.

The COURT.—Read the question.

(Question read.)

The COURT.—Objection overruled.

A. No, sir.

Q. In having that liquor in the car did you have any intent to deprive the Government of any tax?

A. No, sir.

Q. What was your real motive in having it there?

A. Taking it home to drink it.

Q. To get it home? A. Yes, sir.

Q. To transport it? A. Yes, sir.

(Testimony of L. L. Neadeau.)

Q. Mr. Neadeau, you are the vendee named in the conditional sales contract which I have referred to?

A. Yes, sir.

Q. You are the party who obtained delivery of this automobile in question from the W. S. Guy Motor Sales under the conditional sales contract?

A. Yes.

Q. You heard our stipulation as to the amount still due the Port Gardner Investment Company?

A. Yes, sir. [77—37]

Q. In case this automobile should be forfeited to the United States Government, would you be able to pay the Port Gardner Investment Company the balance due? A. No, sir.

Mr. HOAR.—Just a minute. I object to that question as to whether he could pay it or not.

The COURT.—What is your object in asking that question?

Mr. DAVIS.—My object is to show that the party who would be punished here is the innocent party. If Mr. Neadeau were worth anything we could collect this money from him, and then we really would not be hurt by the Government taking the car. The only person who would suffer then would be Mr. Neadeau.

The COURT.—Objection sustained.

Mr. DAVIS.—Exception, please.

The COURT.—Allowed.

Mr. DAVIS.—Does your Honor think it would not make any difference?

The COURT.—Not if you expect to submit this case to the jury.

Mr. DAVIS.—The turn this case has taken, I think it has gone out of the field of the Internal Revenue Act, your Honor, and it has come under the National Prohibition Act. It has been shown positively and affirmatively, by the United States itself that the car has already been convicted under the National Prohibition Act, and the man was convicted of transporting liquor.

The COURT.—The car was not described in the information. [78—38]

Mr. DAVIS.—That would not make any difference.

The COURT.—That may be your view, but it is not the Court's view.

Mr. DAVIS.—It has been decided in several cases recently that where a man is charged with transporting liquor and is convicted, and the car is convicted, that there is an election there to proceed under the National Prohibition Act. The statute expressly provides they cannot proceed both ways.

The COURT.—If the car had been described in the information so the Court could have issued a show cause order describing the car, directing anyone interested to come in and make a claim to it, the Court might listen to your argument.

Mr. DAVIS.—That has never been the practice, though, as I understand it.

The COURT.—I decline to disagree with you. Of course the Court may easily be mistaken.

Mr. DAVIS.—The only purpose I had in this was that taking a liberal view of the pleading, even if the Government would not be entitled to forfeit under the Internal Revenue Act, they might be entitled to forfeit the interest of anyone except an innocent party under the National Prohibition Act, and I want to show that the innocent party would be the one that would suffer.

The COURT.—Now, coming back to this information in the case in which this defendant pleaded guilty.

Mr. DAVIS.—Yes.

The COURT.—Now, if the automobile was described [79—39] by number, there would be something on the record, and it might be the duty of the Court to direct that anyone claiming that car be given a day to show why it should not be forfeited. But the Court certainly is not going to,—if this is a court of record,—to dig into what the testimony was regarding what particular car this transportation took place in, and go out and make an order regarding it. It ceases then to be a court of record. You cannot, by looking at that information, say whether it was one car or another.

Mr. DAVIS.—No, that is possibly true that you could not look at the information and say whether it was one car or another. But the statute expressly provides that where a man is found guilty of transporting liquor in an automobile, the officers are forced to take possession of the car, and upon his conviction of the crime of transporting, the Court

(Testimony of L. L. Neadeau.)

shall issue a show cause order. It does not say that the car has to be described in the information, and I never saw an information in which they described the particular car by number so that you could go out and identify the car from the information.

The COURT.—I think the record proper has to describe the car.

Mr. DAVIS.—That is not the way the statute provides. The statute makes it mandatory for them to take possession of the car, and it says upon conviction of the offender for transporting, the show cause order shall be issued.

The COURT.—I sustain the objection. [80—40]

Mr. DAVIS.—That is all, Mr. Neadeau.

Cross-examination.

(By Mr. HOAR.)

Q. What is your business, Mr. Neadeau?

A. Farmer.

Q. How much land do you have up there?

A. Ten acres, sir.

Q. What do you raise?

A. Potatoes and garden stuff.

Q. How much of a family do you have, Mr. Neadeau? A. Three children.

Q. You were taking this five gallons home for the whole family, were you?

A. If they wanted some of it they could have it.

Q. That was the only purpose of taking it home?

A. Yes, sir.

Q. Where did you get it?

A. I bought it from a fellow.

(Testimony of L. L. Neadeau.)

Q. From whom? A. From a fellow.

Q. Who? A. I do not now his name.

Q. Where? A. Monroe.

Q. Did he have a place of business there?

A. No.

Q. Where? A. On the highway.

Q. How long had you known this party? [81—41]

A. I didn't know him only the day before.

Q. You made arrangements to get this liquor at that time? A. Yes, sir.

Q. Do you know what kind of liquor that is?

A. No, sir.

Q. Did he tell you where he got it?

A. No, sir, I did not ask him.

Q. Did he tell you whether he made it himself or whether he got it from somebody else?

A. No, sir, he just told me how much it cost, that is all.

Q. Do you have any other income than that farm?

Mr. DAVIS.—I submit that is improper cross-examination.

Q. Just the operation of this farm?

Mr. DAVIS.—This gentleman has pleaded guilty to everything charged in that information.

The COURT.—What is the purpose in asking that question?

Mr. HOAR.—He has testified he had this liquor for his own use, and it goes to his intention. It is for the jury to say whether a man raising potatoes would want that much liquor.

Mr. DAVIS.—I do not think, your Honor, that it would show he had much more income than if he had some other undertaking.

The COURT.—Objection sustained.

Mr. HOAR.—He is paying $113 a month on ten acres, and it is a question for the jury whether they believe he was handling this liquor for his own personal use or on an enlarged scale. [82—42]

Mr. DAVIS.—I do not think it would make any difference.

The COURT.—Objection sustained.

Mr. HOAR.—That is all.

Mr. DAVIS.—That is all, Mr. Neadeau.

(Witness excused.)

The COURT.—Is there anything further?

Mr. DAVIS.—That is all, your Honor.

The COURT.—Any rebuttal?

Mr. HOAR.—No, your Honor.

The COURT.—You may address the jury.

(Argument to jury by respective counsel.)

The COURT.—The Court will charge the jury in the morning. Mr. Hoar, something was said about taking time to compare that affidavit with the copy.

Mr. DAVIS.—The search-warrant on the affidavit.

Mr. HOAR.—I do not know that it becomes material.

The COURT.—It is attached to the affidavit, is a part of the affidavit. You are asking that it be detached from the affidavit?

Mr. DAVIS.—I want it to go in evidence. I do not care whether the affidavit is in or not. I would

rather not have the affidavit in, because there is no use taking it out of the other files.

The COURT.—You may examine that, and if you have any objection to it being detached, and using the copy instead of the original, you may state it in the morning, and the Court will rule on it then.

(Whereupon at five o'clock P. M. further hearing herein was continued until Wednesday, January 7, 1925, at 10:00 A. M.) [83—43]

CONTINUATION OF PROCEEDINGS.

January 7, 1925, 10:00 o'clock A. M.

INSTRUCTIONS OF THE COURT TO THE JURY.

The COURT.—The jury are instructed in this case that the information alleges that this car described as one Jewett sedan, giving the license number and engine number, tools and accessories, were seized by Mr. Whitney, Deputy Collector of Internal Revenue, and held in this district; that the seizure was because of the violation of the Internal Revenue law in that this car was used by Luther L. Neadeau for the removal, deposit and concealment of certain distilled spirits.

Mr. DAVIS.—Your Honor, it alleges more than that.

The COURT.—It alleges that it was used for the removal, deposit and concealment of this liquor with the intent of defrauding the United States out of the tax that was due and unpaid on this liquor so alleged to be removed, deposited and concealed in the car.

The claimant has interposed an answer denying these allegations in the answer.

The burden of establishing by a preponderance of the evidence the truth of the allegations of the information rests upon the prosecution, and before you can return a verdict of guilty in the case against this automobile and its accessories, the prosecution must show the truth by a fair preponderance of the evidence of every material allegation in the information.

Among these allegations that the burden rests upon the prosecution of establishing by such evidence, [84—44] is the allegation that a tax on these distilled spirits alleged to have been deposited in the car was unpaid; and further the burden of establishing that the distilled spirits were either deposited in the car as alleged, that is, by Neadeau, or that they were concealed in the car by Neadeau; and further that such deposit or concealment was with the intent to defraud the United States out of the unpaid tax on this liquor. Unless the prosecution has established by a fair preponderance of the evidence those facts, your verdict will be not guilty.

So that you may understand this case, as long as you have tried cases where individuals have been prosecuted for violations of the Volstead law, the Court will explain to you that this is not a proceeding against an individual; it is a proceeding against this car. Under certain circumstances a thing can be guilty. That is, where it is made the instrumentality of defrauding the Government under certain

circumstances or used in an effort to defraud the Government.

Under such circumstances as those alleged in this case, which is a violation of the Internal Revenue Act, the law is that if the party claiming the car, as this claimant here alleges,—or it alleges, rather, that this car was sold on a conditional sales contract, and that part of it was paid for, and part was not paid for, and that the title to the car remained in the seller, and that the seller assigned the contract to the present claimant, and that neither of these parties had any idea that the car was going to be used [85—45] in the illicit handling of liquor.

These allegations the Court instructs you to disregard, for the law is, under this statute, that if the seller of a car by selling it and delivering its possession into the custody of the buyer, the seller trusts him, he allows him to use the car. The Government has no hand in it; the Government is innocent entirely of these dealings between these parties. The seller by delivering the car over to the buyer puts him in possession to use it as he pleases, legally or illegally, and if he uses it to violate this statute, the car is guilty, and both the buyer and the seller lose all rights in the car by that forfeiture.

That is not true under the National Prohibition Law. That is, where you have had cases where it is alleged that a party was transporting liquor in a car, an innocent seller like the claimant is here, could protect his interest, but not so under this statute. Now, it may not be necessary for the Court to instruct you concerning differences in these two stat-

utes, but as long as counsel have argued it to you, it may not add to your confusion if the Court explains to you wherein this difference lies.

Now, under the National Prohibition law, the Volstead law, where a car is concerned, it is a matter of transportation. Now, transportation means moving from one place to another. Under this law, so far as this information accuses the car of the removal of the liquor, you are instructed to disregard that allegation of removal, because there is nothing in the information [86—46] to say where it was removed from. The statute in so far as it uses the word "removal" contemplates the removal from a distillery or bonded warehouse, or some place where the liquor might remain without the payment of tax. But there is nothing said in this information about a distillery, warehouse, or any other place, if any such there be, where liquor might remain legally without the payment of the tax.

So that leaves in the information the charge that the car was used for the deposit and concealment. You can readily understand that under the Volstead law, transportation, involving the movement from place to place, is not the same thing as using a car for the deposit and concealment of liquor, because you can deposit and conceal liquor in a car without its ever moving.

Under the Volstead law the liquor must be of a certain character. It must be fit for beverage purposes. Under the law under which we are proceeding here, it may be fit or unfit for beverage purposes as long as it is distilled spirits.

Not only are there these differences between these two laws, but the law under which we are proceeding now has this additional requirement, that the liquor be subject to a tax, and if that tax be not paid, which would not make any difference as far as the Volstead law was concerned, the transporting of the liquor is made illegal under the Volstead law whether the tax has or has not been paid. Then, under this statute under which we are proceeding now there is this [87—47] additional requirement: The deposit or concealment of the liquor in the car must have been with the intent to defraud the United States out of this revenue due on the liquor.

As you will have to consider the evidence in the case regarding whether the tax had been paid on this liquor and the alleged intent with which the deposit and concealment was made, it may be of further help to you if the Court explains to you briefly something concerning the customs laws and the internal revenue law.

Now, there was a customs officer on the stand yesterday who explained to you that if liquor was brought into the United States from Canada that the practice was that the customs officer would have the Internal Revenue officer place stamps on the imported liquor. There is no direct evidence in this case that this was imported liquor. This evidence was put in by the Government in an effort to prove a negative, that is, establish that this liquor was subject to a tax no matter where it came from.

Now, when intoxicating liquor is imported into the United States, at least in casks and kegs, the officers of the customs themselves put a stamp on

the container as evidencing the payment of customs duties, and this stamp is canceled by marks across it that extend not only across the stamp but on the wood on either side of the stamp, certain black lines, and then so that it may not be removed and used again not only is it immediately canceled and scratched up so as to [88—48] destroy it, but they varnish it over, the stamp and the wood, to render it still further difficult to work any fraud on the customs.

You have heard the evidence from this customs officer regarding what that officer would probably do, to show that the internal revenue was paid for the liquor in such a container. So the liquor would be not only subject to a duty coming into the United States from the outside, but as soon as it reached the United States it would be subject also to this internal revenue tax that the witness described to you. That is, that is the evidence of this witness. The Court is not instructing you to that effect as a matter of law, but simply calling your attention to what the witness testified to.

Now, regarding the internal revenue. The Government is kept up and its expenses paid by taxes not only placed on certain commodities and merchandise and articles that are brought into the United States from the outside which are called customs, but part of that revenue is derived from taxes placed on articles or merchandise or commodities produced in the country. Among these articles that are so taxed internally, that is that were produced in the country, are intoxicating liquors and distilled spirits.

Now, where a wholesaler places five wine gallons or more of distilled spirits in a keg or other container, it is his duty to place on that a stamp as evidencing the payment of the internal revenue on the liquor, and it must be so placed by him on such container [89—49] before he sends it out from his establishment.

You have a right to take into account what the Court has told you regarding the law, this matter of payment of taxes on liquor and the method that would be used to show that that tax was paid, and what the evidence has shown in this case regarding that keg which has been testified to as having been found in the car, in determining whether in fact the tax due on this liquor had been paid.

The Court instructs as a matter of law that such liquor was and is liable to a tax, so you need not concern yourself with that fact. The Court instructs you that as a matter of law: That is, such liquor as has been testified in this case this is. But that leaves for you to determine the question of fact about whether that tax had been paid. So you will not only take into account what the Court has told you regarding the law, but what the evidence has shown regarding what, if any, stamps were on this keg, and what the evidence has shown regarding whether any tax has been paid, as shown by the books to have been paid in to this internal revenue district.

If you find by a fair preponderance of the evidence that the tax had not been paid on this liquor, it would then be your duty to consider next whether this

liquor was deposited or concealed in this car. Now, the words "deposit and conceal" as used in this information and these instructions, mean what you ordinarily understand to be meant by those words. It is not necessary for you to find that the liquor had been both [90—50] deposited and concealed in this case, but if it was deposited there, as alleged in the information, so far as that point is concerned, you would be warranted in returning a verdict of guilty, even though there had been no fair preponderance of the evidence that it was concealed in it. If you are, in addition to what I have told you, satisfied by a fair preponderance of the evidence that the liquor was either deposited or concealed in the car, as alleged in the information, you would then proceed to consider whether a fair preponderance of the evidence showed that it had been deposited or concealed in the car with the intent to defraud the United States out of the taxes due on the liquor.

Now, fraud is not presumed unless there is evidence to support it. But every man is presumed to intend the ordinary and natural consequences of his voluntary acts. That is, he is presumed to intend what would ordinarily and naturally follow the things that he voluntarily does in the absence of some explanation negativing that presumption. And if the ordinary and natural result of the liquor being there placed in the car or concealed in the car and handled in the manner that the evidence may have shown it to have been handled in this case, would in the absence of a discovery by the internal revenue officers, have resulted in the Government being defrauded out of that tax due on this liquor, then the

car being used by the authority of the owner, that is, with his consent, not necessarily his authority to use the car wrongfully, but authority to [91—51] use it, it would be presumed that it was the intent to defraud the Government out of its tax, and the car would be guilty. That is, if this presumption was not negatived or overcome by evidence showing that the party was innocent of any such intention.

In connection with this matter of intent to defraud the Government, the Court calls attention to the fact that Mr. Mooring testified that Mr. Neadeau told him this was moonshine liquor. Now, Mr. Whitney's testimony was that this expression "moonshine liquor" meant illicit liquor, that is, the very controlling purposes for which it is made would be to avoid the law and the revenues imposed upon it by law. If you give credit to that testimony of Mr. Mooring's—

Mr. HOAR.—Mr. Simmons, I believe, your Honor.

The COURT.—Mr. Simmons. I am confusing Mr. Simmons with Mr. Mooring, who was a witness in the prior case. You would take that into account in determining whether Mr. Neadeau intended to defraud the Government out of any tax that was due on the liquor.

In the course of these instructions the Court has told you where the burden rested upon the Government of establishing issues by a fair preponderance of the evidence. A fair preponderance of the evidence is the greater weight of the evidence; that evidence preponderates which so appeals to your intelligence, your reason, and your experience, as to

create and induce a belief in your minds where there is contradiction in the evidence, or a dispute. That evidence preponderates which is so strong in these particulars as to [92—52] create and induce a belief in your minds in spite of the opposing evidence and in spite of any assaults or attacks made upon it by counsel in argument, or any of his reasonings or deductions that he may have tried to get you to apply in explaining the matter.

You are in this case, as in every case where questions of fact are brought to the jury, the sole and exclusive judges of every question of fact in the case, the weight of the testimony and the credibility of the witnesses. Unless specially requested to do so by counsel I will not elaborate upon that instruction, because I have done so in a number of cases recently where members of this panel were sitting on other juries.

Counsel in his argument stated to you that it would be your duty to acquit this car because if you were driving your car and invited somebody to ride with you and you let somebody have your car and they invited somebody else to ride with them and he had a bottle of liquor in his pocket, away would go your car. Now, that is not the law, because in such a case the liquor would not be deposited in the car or concealed in the car. The liquor under those circumstances would be concealed on the person of the party who had that bottle on his person.

Mr. DAVIS.—I think, your Honor, my argument was if the party getting in the car had a bottle of

liquor which he placed in the car, not what he had in his pocket.

The COURT.—I did not so understand it.

Mr. DAVIS.—That is the way I meant it because I am perfectly [93—53] familiar with that rule that your Honor has announced.

The COURT.—It is time enough for the Court to decide that as a question of law when it arises.

But the Court instructs you as far as this case is concerned that the law is that it is the party trusted with the car that abuses it in its use. If you picked up somebody, a neighbor, and was hauling him in your car and he took a bottle out of his pocket and to your knowledge put it in the pocket of the car, and you went your way with it concealed in the pocket of the car, your car might go, and very likely would if it were found out, the other elements of this offense being established. But if he, without your knowledge, while you were driving your car, slipped it under the seat of your car, and you went your way, your car would not be forfeited, because while you have trusted him to ride, you have not trusted him with your car; you have not let him control your car to the prejudice of the Government.

Is there anything further before explaining the verdict?

Mr. DAVIS.—Your Honor, I want to except to the instruction which your Honor gave to the effect that the intoxicating liquor found in this car is subject to a tax.

The COURT.—I said such liquor is subject to a tax.

Mr. DAVIS.—Whatever it was, that such liquor was subject to a tax, on the ground, as I understand the law, that the so-called tax has been defined by the Supreme Court as being a penalty and not a tax, and that before any tax [94—54] can be assessed on anyone for having such liquor in his possession, the person against whom the tax is attempted to be assessed, must be notified and have a hearing. That is the ruling in the Wardall case in the United States Supreme Court. That is the most recent expression of the United States Supreme Court on this subject.

The COURT.—Exception allowed.

Mr. DAVIS.—I want to except to that portion of the Court's instruction stating that the jury are at liberty to disregard the affirmative matter set up in the claim of the claimant herein showing that this conditional sales contractor vendor,—that there is a certain balance due on the car, and that it is innocent of any intent or knowledge that the car was to be used in the violation of this law or any other law.

The COURT.—Exception allowed.

Mr. DAVIS.—I object to the remarks of the Court relative to the customs laws on the ground that there is no evidence that this liquor which was found in this car was brought into this country from elsewhere, that it had ever passed through the customs, or that it should have passed through the customs; also on the grounds that the laws and

regulations which the Court had reference to as to the matter of stamping liquor imported into the country were laws and regulations which were carried into effect prior to the passing of the present statute, and that at present under the laws such liquor, as the liquor in question, could not legally be imported into the country, and there would be no way in which the [95—55] Government could get any tax, either customs or internal revenue, on any such liquor being brought into the country from another country or foreign country.

The COURT.—Exception allowed. But I instruct the jury now that since the Volstead law the customs will not permit or will not allow the bringing into *of* the United States intoxicating liquor fit for beverage purposes, unless there is a permit to bring it in granted by the Commissioner of Internal Revenue, and that in a state such as this that has a bone dry law, no such permits are given.

Mr. DAVIS.—I also except to that portion of the Court's instruction which dwelt upon the fact that the internal revenue laws were passed for the purpose of keeping up and paying the expenses of the Government, and that the taxes imposed upon liquors such as the liquor found in this case went towards the support and upkeep of the Government, on the ground and for the reason that such laws are no longer applicable to liquor, such as the liquor in question in this case, in that there is no way in which the Government can collect any tax or obtain any revenue upon liquors such as this liquor in question, and that the so-called

tax that is now claimed to be imposed upon this liquor is not a tax for revenue purposes, but is a tax levied, or penalty, rather, levied in aid of the enforcement of the prohibition law of the United States, and as additional punishment against a person who manufactures or sells or traffics in liquor.

The COURT.—Exception allowed. [96—56]

Mr. DAVIS.—I object to the Court's remarks to the jury in regard to the evidence of Mr. Simmons, to the effect that at the time of the seizure of the car Mr. Neadeau said the liquor in question was moonshine liquor. And I object to the further remarks of the Court to the effect that the manufacture of illicit liquor or moonshine liquor is primarily presumed to be for the purpose of defrauding the Government out of a tax, in that such instruction is not applicable to the law as it is at present. That would have been a correct instruction prior to the time the National Prohibition Law or the bone dry act of the State of Washington, when liquor could have been legally manufactured and legally subject to taxes, and where the only purpose of anyone manufacturing liquor, except in an authorized distillery, would have been to avoid a tax but that it is apparent since the passage of the Volstead act and the constitutional amendment prohibiting the trafficking, manufacturing and selling of intoxicating liquor and the bone dry law of the State of Washington, that the purpose of anyone trafficking or dealing in moonshine liquor would be otherwise than to prevent the Government from collecting a tax. In other words, there is no way in which

they could have moonshine whiskey in existence except by illicit manufacture, and that the purpose could just as well be to get liquor to drink or sell as to defraud the Government of any tax.

The COURT.—Exception allowed.

Mr. DAVIS.—I also request the Court to give the jury Instruction [97—57] No. 22 and No. 23 requested by the claimant. I do not know whether I should read those instructions. Is it the practice to read them into the record?

The COURT.—Instructions Nos. 22 and 23?

Mr. DAVIS.—Yes, your Honor, those are additional instructions.

The COURT.—I will examine this instruction No. 22. That is refused.

Mr. DAVIS.—Exception, please.

The COURT.—Exception allowed.

Mr. DAVIS.—That is 22?

The COURT.—That is 22. Now, I will read No. 23. Well, the same thought seems to be in both of those instructions. That is, the completed or successful fraud is not necessary. Exception allowed to both of them.

Mr. DAVIS.—That was not my intention. My intention was that if the act when completed would not result in a fraud, then the doing of the act would not be evidence of an intent to defraud.

The COURT.—I think I have covered all that you are entitled to in those instructions in the instructions I have given the jury.

Mr. DAVIS.—The Court will not instruct the jury to that effect?

The COURT.—I think I have covered—

Mr. DAVIS.—I mean to the effect that I have just stated, that if the doing of an act when completed would not result in defrauding the Government out of any tax, then the doing of the act would not be evidence of an [98—58] intent to defraud the Government of any tax.

The COURT.—I have given as far as I think the law justifies.

Mr. DAVIS.—Exception.

The COURT.—Exception allowed.

Mr. DAVIS.—I also want to except to the Court's refusal to give claimant's requested instructions 1, 3, 4, 5, 6, 8, 9, 10, 11, 12½, 14, 15, 16, 17, 20 and 21.

The COURT.—Exceptions allowed.

Mr. DAVIS.—That is all.

The COURT.—There are two forms of verdict. One recites that the jury finds the automobile, and so forth, is guilty as charged in the information, and the other one finding the automobile, and so forth, not guilty as charged in the information. "And so forth" here refers to the accessories. Is a sealed verdict agreeable in case the jury agree out of hours?

Mr. DAVIS.—Yes, your Honor.

The COURT.—The jury will take out with them the information, the claim and the answer of the claimant. This search-warrant attached to the affidavit, did you compare it?

Mr. HOAR.—I will admit it, your Honor.

The COURT.—Is there any objection to separat-

ing this from Mr. Simmons' affidavit and then returning it later?

Mr. DAVIS.—No, your Honor, it would be available anyway in one of the files or the other.

The COURT.—The clerk will after the verdict is returned in this case reattach this warrant to this affidavit.

When you have reached a verdict you will have your [99—59] foreman sign whichever one of the verdicts you agree upon and return it into court. If you agree upon a verdict at such time as the court is not in session, you will seal it up in an envelope, and leave it with your foreman to be returned at the next session of court. You may now retire.

(Jury thereupon retired to deliberate upon its verdict.) [100—60]

* * * * * * * * * *

Comes now the above-named claimant, Port Gardner Investment Company, a corporation, and proposes the foregoing, together with all of the exhibits referred to therein and admitted in evidence by the Court, as its bill of exceptions in this cause and prays that the same may be duly allowed, settled, signed and certified by the Judge as provided by law.

Dated this 22d day of January, 1925.

GRINSTEAD, LAUBE & LAUGHLIN and
THOMAS E. DAVIS,

Attorneys for Claimant.

ACCEPTANCE OF SERVICE.

We the undersigned attorneys for the United States of America, the above-named libelant, hereby accept service of claimant's proposed bill of exceptions in the above-entitled matter and acknowledge receipt of a copy of the same this 22 day of January, 1925.

THOS. P. REVELLE,
J. W. HOAR,
Attorneys for Libelant. [101]

* * * * * * * * * *

ORDER SETTLING BILL OF EXCEPTIONS.

The foregoing bill of exceptions is hereby approved, allowed, settled and signed as a part of the record herein.

Dated this 22 day of January, 1925.

EDWARD E. CUSHMAN,
Judge.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Jan. 27, 1925. Ed. M. Lakin, Clerk. By S. M. H. Cook, Deputy. [102]

CLAIMANT'S EXHIBIT "B."

CONDITIONAL SALES CONTRACT.
W. S. GUY MOTOR SALES.

No. ————————
$1134.40 ———

Everett, Wash., March 15, 1924. 19—

FOR VALUE RECEIVED, I, the undersigned (hereinafter designated as the vendee), residing in

Monroe, No. R. F. D. #1 Street, County of Snohomish, State of Washington, promise to pay to the order of W. S. Guy Motor Sales, the purchase price of Sixteen Hundred and Fifty No/100 Dollars interest and insurance added, of which price the sum of Six Hundred Sixty and no/100 dollars is paid in cash, and the balance I agree to pay, together with 8% interest on unpaid balances each month at the following rate. . . . . .Ten payments of $113.44. First payment due April 29th and on the 29th of each and every month until fully paid. Payments include interest and Insurance.

The consideration of the above and foregoing contract is the agreement of the said Vendor to sell and deliver to the undersigned Vendee, one Jewett Special, Style 5 pass. Sedan, Car No. 44037, Motor No. 44079 the delivery and receipt of which is hereby acknowledged, upon the conditions hereinbefore and hereinafter set forth, to wit: It is expressly agreed that the title and right of possession in and to the said property shall remain in said Vendor, its successors or assigns, until the above specified payments, with interest, have been fully made, then the title thereto shall vest in the undersigned Vendee. It is agreed that said property shall not be sold or removed from Snohomish County without the written consent of the said Vendor, its successors or assigns, Vendee agrees to pay all taxes and assessments on said Jewett Automobile before the same become delinquent. It is further agreed that in case of default in the payment of the said principal sum or any of the install-

ments above mentioned as the same shall fall due according to the terms and conditions hereof, or the undersigned Vendee shall sell or encumber, or attempt to sell or encumber, or remove said property from the place above mentioned, without the written consent of Vendor, its successors or assigns, or shall fail to pay taxes or assessments before the same become delinquent, or if any writ issued by any court or by any Justice of the Peace or any distress warrant shall be levied on said property, or if said Vendor, its successors or assigns shall at any time time deem themselves insecure; or in case any of the conditions of this contract are not strictly complied with by the undersigned Vendee, the said Vendor, its successors or assigns, shall have the right and option to either: [103]

FIRST: Terminate this contract, and may enter any premises with or without force of law, wherever the property is, or is supposed to be, and reclaim the same, the possession of these presents being sufficient authority therefor; and in case the said Vendor, its successors or assigns, shall retake possession of said property, as aforesaid, all moneys paid on the purchase thereof shall be retained as liquidated damages for the non-fulfillment of this contract, without relief from valuation or appraisement laws;

SECOND: Said Vendor, its successors or assigns, may declare the whole amount thereof remaining unpaid, due and payable, and enter any premises, with or without force of law, wherever said property is, or is supposed to be, and take possession thereof, the possession of these presents

being sufficient authority therefor, and sell said property at public or private sale, with or without notice to any parties interested (and the Vendor, its successors or assigns, may become a purchaser at said sale) and apply the proceeds of said sale upon the whole amount due, together with interest, costs and attorney's fees, as hereinafter provided; and should the proceeds of such sale be insufficient to pay the amount so remaining unpaid as aforesaid, together with interest, costs and attorney's fees and expenses of such sale, the undersigned Vendee agrees to pay the said Vendor, its successors or assigns, the balance so remaining unpaid;

THIRD: The said Vendor, its successors or assigns, may declare the whole amount thereof remaining unpaid due and payable and may commence an action in any court of competent jurisdiction, against the undersigned Vendee, or any parties interested herein, and all sureties or endorsers hereon, for the amount due under this contract, together with interest, costs and attorney's fees, and have its lien under this contract foreclosed, and the said property sold in the same manner as personal property is sold under mortgage foreclosure, and the proceeds of such sale applied towards the payment of the principal, interest, costs and attorney's fees, and if the proceeds of such sale are not sufficient to pay the full amount of the principal, interest, costs, and attorney's fees, then the said Vendor, its successors or assigns, shall have deficiency judgment for any balance remaining unpaid and that execution may be issued there-

for. It is also agreed that in case the undersigned Vendee fails to carry out the terms and conditions of this contract and make the payments as required herein, and in case the said Vendor, its successors or assigns, is required to retake said property or take and sell the same or commence suit or action as herein provided, the undersigned Vendee agrees to pay, in addition to the costs and disbursements provided by statute, such additional sum as may be adjudged reasonable, as attorney's fees and expenses of sale and collection. For valuable consideration each and every party signing or endorsing this instrument, and the installment notes aforesaid, hereby waives presentment, demand, protest and notice of non-payment thereof and binds himself thereon as principal. It is further agreed that the undersigned Vendee shall keep said property insured while this contract is in force in the name of and for the benefit of W. S. Guy Motor Sales, their successors or assigns, as their interest may appear, in the manner and to the extent specified or required at the time of the execution hereof. It is also agreed that the acceptance by Vendor, its successors or assigns, of any note or security for the faithful performance of this contract, either at the time of signing the same or at any time subsequent thereto, and any assignment of such note or other collateral by them shall not be deemed or held to be a waiver of their rights to enforce any of the provisions of this contract; provided, that such note or other collateral security be returned to the Vendee. This contract contains all

the agreements, between the parties, and there are no conditions not expressed herein, and no oral promises, agreements, undertakings, or understandings not set forth herein shall be binding on the Vendor, its successors or assigns. [104]

Executed in quadruplicate, this 15th day of March, 1924 A. D. 19——.

W. S. GUY MOTOR SALES.
By W. S. GUY (Seal)
Vendor.

_____,
Agent for Vendor.

L. L. NEADEAU, (Seal)
Vendee.

_____,
Collection Address.

This agreement is expressly subject to the approval of the Vendor and shall not be binding on Vendor until approved in writing hereon.

Dated this 15th day of March, 1924, A. D. 19——.

ASSIGNMENT.

The undersigned, W. S. Guy Motor Sales, the Vendor named in the foregoing contract, for value received does hereby sell, assign, transfer and set over unto Port Gardner Investment Co., all of its right, title and interest in and to the within and foregoing contract and all payments of every kind now due or may hereafter become due thereunder, including any note or notes secured by the contract, and does hereby guarantee that there is still unpaid upon said contract ———————— Dollars,

($1134.40) and together therewith does hereby sell, assign, transfer and set over the said instrument described in the foregoing contract and all equipment therewith and all property described in said contract, and does hereby authorize the purchaser hereof to collect all payments now due or hereafter to become due thereon and to give all acquittances and discharges therefor and to transfer the property herein described to the Vendee upon fulfillment thereof.

Dated at Everett, Washington, this 15th of Mar. 1924.

W. S. GUY MOTOR SALES. (Seal)
W. S. GUY.

In the presence of

_____

_____

332282. No. —— Conditional Contract Between W. S. Guy Motor Sales and————. Dated ———, 19——.

[Endorsed]: State of Washington, County of Snohomish,——ss. Filed at the request of M. J. Ferrell, on Mar. 24, 1924, at 10:50 o'clock A. M. Adrian Hulbert, County Auditor. By J. Hangen, Deputy. [105]

State of Washington,
County of Snohomish,— ss.

I, Adrian Hulbert, Auditor of Snohomish County, State of Washington, and *ex-officio* Recorder of Deeds in and for said County, do hereby certify the above and foregoing to be a true and correct

transcript of Conditional Sales Contract—W. S. Guy Motor Sales to L. L. Neadeau,—now on file in this office, File No. 332282.

WITNESS my hand and official seal this 24 day of December, 1924.

[Seal] ADRIAN HULBERT,
Auditor, Snohomish County, Washington.
By John Hangen,
Deputy. [106]

EXHIBIT "A."

Copy.

Local Form No. 103.
United States of America,
Western District of Washington,
Northern Division,—ss.

SEARCH-WARRANT.

The President of the United States to the Marshal of the United States for the Western District of Washington, and His Deputies or Either of Them, and to Any Federal Prohibition Officer or Agent or the Federal Prohibition Director of the State of Washington, or Any Federal Prohibition Agent of Said State, and to the United States Commissioner of Internal Revenue, His Assistants, Deputies, Agents or Inspectors, GREETING:

WHEREAS, J. M. Simmons, a Federal Prohibition Agent of the State of Washington, has this day made application for a Search-warrant and made oath in writing, supported by affidavits, before the undersigned, a Commissioner of the United States

for the Western District of Washington, charging that a crime is being committed against the United States in violation of the NATIONAL PROHIBITION ACT OF Congress by one JOHN DOE RICHARDS AND RICHARD ROE JOHNSON, true names to this affiant unknown, proprietors and their employees; who was, on the 5th day of AUGUST, 1924, and is, at said time and place, possessing a still and distilling apparatus and materials designed and intended for use in manufacturing intoxicating liquor, and manufacturing, possessing, intoxicating liquor, all for beverage purposes, on certain premises of County of Snohomish, State of Washington, and in said District, more fully described as Second House on North Side of Duvall-Monroe Highway, and West from Highway bridge over Skykomish River in Snoh*i*mosh County, State of Washington; and on the premises used, operated and occupied in connection therewith and under the control and jurisdiction of said above parties;

AND WHEREAS, the undersigned, is satified of the existence of the grounds of the said application, and that there is probable cause to believe their existence,

NOW, THEREFORE, YOU ARE HEREBY COMMANDED, and authorized and empowered in the name of the PRESIDENT OF THE UNITED STATES to enter said premises with such proper assistance as may be necessary, in the day time, or night time, and then and there diligently investigate and search the same and into and concerning said crime, and to search the person of said above

named persons and from him or her, or from said premises seize any or all of the said property, documents, papers and materials so used in or about the commission of said crime, and any and all intoxicating liquor and the containers thereof, and then and *there take* the same into your possession, and true report make of your said acts as provided by law.

GIVEN under my hand and seal this 7th day of August, 1924.

A. C. BOWMAN,
United States Commissioner, Western District of Wash.

Copy. (Exhibit "A.")

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Oct. 31, 1924. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [107]

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* * * * * * * * *

PETITION FOR ORDER ALLOWING WRIT OF ERROR.

The said claimant, Port Gardner Investment Company, a corporation, feeling itself aggrieved by the judgment entered in the above-entitled cause on the 22d day of January, 1925, upon the verdict of the jury, in favor of said libelant and against said claimant, ordering the above-named respondent automobile forfeited, in which judgment and the proceedings leading up to the same, certain errors were committed to the prejudice of said claimant,

which more fully appear from the assignment of errors herein, comes now and prays said court for an order allowing said claimant to prosecute a writ of error to the Honorable United States Circuit Court of Appeals for the Ninth Circuit for the correction of the errors complained of, under and according to the laws of the United States in that behalf made and provided, and also prays that an order be made fixing the amount of security which said claimant shall give upon said writ of error, and that upon the furnishing of said security all further proceedings in this cause be suspended and stayed until the determination of said writ of error by said Circuit Court of Appeals for the Ninth Circuit. And said [108] claimant further prays that a transcript of the record, proceedings and papers in this cause, duly authenticated, may be sent to the United States Circuit Court of Appeals.

Dated this 30th day of January, A. D. 1925.

GRINSTEAD, LAUBE & LAUGHLIN and
THOMAS E. DAVIS,

Attorneys for Claimant.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Jan. 30, 1925. Ed. M. Lakin, Clerk. By S. M. H. Cook, Deputy. [109]

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* * * * * * * * *

ASSIGNMENT OF ERRORS.

Comes now Port Gardner Investment Company, a corporation, claimant above named, and assigns

the following errors upon which it will rely upon its prosecution of the writ of error in the above-entitled cause in the United States Circuit Court of Appeals for the Ninth Circuit:

I.

The District Court erred in sustaining an objection by the United States to the following question asked the witness W. M. Whitney by claimant on cross-examination:

> "Mr. Whitney, the testimony of the United States officers up to the present time indicate that the liquor of which Exhibit 1 is a sample, was found in a 5-gallon keg in the rear of the automobile in question up near Monroe, Washington, on the 9th day of August, 1924? Will you tell the jury whether the fact that that liquor was in the car at the particular time in any way deprived the Government of any tax which it could have collected, or would have collected if the liquor had been anywhere else in the State of Washington at the time this seizure was made."

to which ruling of the Court claimant then and there duly excepted and its exception was allowed.

II.

The Court erred in sustaining the libelant's objection to the [110] following question asked the witness, L. L. Neadeau, a witness on behalf of plaintiff:

> "In case this automobile should be forfeited to the United States Government, would you

be able to pay the Port Gardner Investment Company the balance due?"

to which ruling the claimant then and there duly excepted and its exception was allowed.

III.

The Court erred in instructing the jury as follows:

"Under such circumstances as those alleged in this case, which is a violation of the Internal Revenue Act, the law is that if the party claiming the car, as this claimant here alleges, or it alleges, rather, that this car was sold on a conditional sales contract, and that part of it was paid for, and part was not paid for, and that the title to the car remained in the seller, and that the seller assigned the contract to the present claimant, and that neither of these parties had any idea that the car was going to be used in the illicit handling of liquor.

"These allegations the Court instructs you to disregard for the law is, under this statute, that if the seller of a car by selling it and delivering its possession into the custody of the buyer, the seller trusts him, he allows him to use the car. The Government has no hand in it; the Government is innocent entirely of these dealings between these parties. The seller by delivering the car over to the buyer puts him in possession to use it as he pleases, legally or illegally, and if he used it to violate this statute, the car is guilty, and both the buyer and the

seller lose all rights in the car by that forfeiture."

to which instruction the claimant at the time duly excepted and its exception was allowed.

IV.

The Court erred in instructing the jury as follows:

"Now, regarding the internal revenue. The Government is kept up and its expenses paid by taxes not only placed on certain commodities and merchandise and articles that are brought into the United States from the outside which are called customs, but part of that revenue is derived from taxes placed on articles or merchandise or commodities produced in the country. Among these articles that are so taxed internally, that is that were produced in the country, are intoxicating liquors and distilled spirits.

"Now, where a wholesaler places five wine gallons or more of distilled spirits in a keg or other container, it is his duty to place on that stamp as evidencing the payment of the internal revenue on the liquor, and it must be so placed by him on such container before he sends it out from his establishment.

"You have a right to take into account what the Court has told you regarding the law, this matter of payment of taxes on [111] liquor and the method that would be used to show that that tax was paid, and what the evidence has shown in this case regarding that keg which

has been testified to as having been found in the car, in determining whether in fact the tax due on this liquor had been paid.

"The Court instructs as a matter of law that such liquor was and is liable to a tax, so you need not concern yourself with that fact. The Court instructs you that as a matter of law. That is, such liquor as has been testified in this case this is. But that leaves for you to determine the question of fact about whether that tax has been paid. So you will not only take into account what the court has told you regarding the law, but what the evidence has shown regarding what, if any, stamps were on this keg, and what the evidence has shown regarding whether any tax has been paid, as shown by the books to have been paid in to this internal revenue district."

to which instruction the claimant at the time duly excepted and its exception was allowed.

V.

The Court erred in instructing the jury as follows:

"If you find by a fair preponderance of the evidence that the tax had not been paid on this liquor, it would then be your duty to consider next whether this liquor was deposited or concealed in this car. Now, the words 'deposit and conceal' as used in this information and these instructions, mean what you ordinarily understand to be meant by those words. It is not necessary for you to find that the liquor

had been both deposited and concealed in this case, but if it was deposited there, as alleged in the information, so far as that point is concerned, you would be warranted in returning a verdict of guilty, even though there had been no fair preponderance of the evidence that it was concealed in it. If you are, in addition to what I have told you, satisfied by a fair preponderance of the evidence that the liquor was either deposited or concealed in the car, as alleged in the information, you would then proceed to consider whether a fair preponderance of the evidence showed that it had been deposited or concealed in the car with the intent to defraud the United States out of the taxes due on the liquor.

"Now, fraud is not presumed unless there is evidence to support it. But every man is presumed to intend the ordinary and natural consequences of his voluntary acts. That is, he is presumed to intend what would ordinarily and naturally follow the things that he voluntarily does in the absence of some explanation negativing that presumption. And if the ordinary and natural result of the liquor being there placed in the car or concealed in the car and handled in the manner that the evidence may have shown it to have been handled in this case, would in the absence of a discovery by the internal revenue officers, have resulted in the Government being defrauded out of that tax due on this liquor, then the car being used

by the authority of the owner, that is, with his consent not necessarily his authority to use the car wrongfully, but authority to use it, it would be presumed that it was the intent to defraud the Government out of its tax, and the car would be guilty. That is, if this presumption was not negatived or overcome by evidence showing that the party was innocent of any such intention."

to which instruction the claimant at the time duly excepted and its exception was allowed. [112]

VI.

The Court erred in instructing the jury as follows:

"In connection with this matter of intent to defraud the Government, the court calls attention to the fact that Mr. Mooring testified that Mr. Neadeau told him this was moonshine liquor. Now, Mr. Whitney's testimony was that this expression 'moonshine liquor' meant illicit liquor, that is, the very controlling purposes for which it is made would be to avoid the law and the revenues imposed upon it by law. If you give credit to that testimony of Mr. Mooring's—

Mr. HOAR.—Mr. Simmons, I believe, your Honor.

The COURT.—Mr. Simmons. I am confusing Mr. Simmons with Mr. Mooring who was a witness in the prior case. You would take that into account in determining whether Mr. Nea-

deau intended to defraud the Government out of any tax that was due on the liquor."

to which instruction the claimant at the time duly excepted and its exception was allowed.

VII.

The Court erred in instructing the jury as follows:

"But the Court instructs you as far as this case is concerned that the law is that it is the party trusted with the car that abuses it in its use. If you picked up somebody, a neighbor, and was hauling him in your car and he took a bottle out of his pocket and to your knowledge put it in the pocket of the car, and you went your way with it concealed in the pocket of the car, your car might go, and very likely would if it were found out, the other elements of this offense being established. But if he, without your knowledge, while you were driving your car, slipped it under the *seat* of your car, and you went your way, your car would not be forfeited, because while you have trusted him to ride, you have not trusted him with your car; you have not let him control your car to be the prejudice of the Government."

to which instruction the claimant at the time duly excepted and its exception was allowed.

VIII.

The Court erred in instructing the jury as follows:

"Now, there was a customs officer on the stand yesterday who explained to you that if liquor was brought into the United States from Canada that the practise was that the customs officer would have the internal revenue officer place stamps on the imported liquor. There is no direct evidence in this case that this was imported liquor. This evidence was put in by the Government in an effort to prove a negative, that is, establish that this liquor was subject to a tax no matter where it came from.

"Now, when intoxicating liquor is imported into the United States, at least in casks and kegs, the officers of the customs themselves put a stamp on the container as evidencing the payment of customs duties, and this stamp is cancelled by marks across it that extend not only across the stamp but on the wood on either side of the stamp, certain black lines, and then so that it may not be removed and used again not only is it immediately canceled and [113] scratched up so as to destroy it, but they varnish it over, the stamp and the wood, to render it still further difficult to work any fraud on the customs.

"You have heard the evidence from this customs officer regarding what that officer would probably do, to show that the internal revenue was paid for the liquor in such a container. So the liquor would be not only subject to a duty coming into the United States from the outside, but as soon as it reached the United

States it would be subject also to this internal revenue tax that the witness described to you. That is, that is the evidence of this witness. The Court is not instructing you to that effect as a matter of law, but simply calling your attention to what the witness testified to."

to which instruction the claimant at the time duly excepted and its exception was allowed.

IX.

The Court erred in refusing to give the jury claimant's requested instruction #1, reading as follows:

"Members of the jury, you are instructed to find in favor of the claimant and against the libelant."

to which refusal said claimant duly excepted and its exception was allowed.

X.

The Court erred in refusing to give the jury claimant's requested instruction #3, reading as follows:

"You are instructed that the so-called tax imposed on intoxicating liquors by the Revenue Laws and Tariff Laws of the United States are penalties and not taxes in the sense that the word 'taxes' is used in Section 3450 of the United States Revised Statutes and that before a tax, so called, or penalty, shall be assessed against or collected from any person on account of responsibility for the manufacture or sale of intoxicating liquor, the evidence must first be produced of the illegal manufacture or

sale of such intoxicating liquor and a hearing had upon the question of such illegal manufacture or sale."

to which refusal said claimant duly excepted and its exception was allowed.

XI.

The Court erred in refusing to give the jury claimant's requested instruction #4, reading as follows:

"You are instructed that in this case there is no evidence that there was any hearing had or evidence given of the illegal manufacture or sale of any intoxicating liquor in controversy in this case prior to the time the automobile in question was seized by the Government."

to which refusal said claimant duly excepted and its exception was allowed. [114]

XII.

The Court erred in refusing to give the jury claimant's requested instruction #5, reading as follows:

"You are instructed that in the absence of a hearing and evidence prior to the time of the seizure of the car to determine that the person manufacturing, selling or trafficking in intoxicating liquor found in the car should have a tax assessed against him, said car was not subject to forfeiture."

to which refusal said claimant duly excepted and its exception was allowed.

XIII.

The Court erred in refusing to give the jury

claimant's requested instruction #6, reading as follows:

> "You are instructed that in no event can a tax imposed on intoxicating liquor be enforced by forfeiture of an automobile in which the intoxicating liquor was found, but that if such tax is collectible from anyone, it is collectible only from the person who manufactured, sold or trafficked in such intoxicating liquor."

to which refusal said claimant duly excepted and its exception was allowed.

XIV.

The Court erred in refusing to give the jury claimant's requested instruction #9, reading as follows:

> "You are instructed that the words 'removal, deposit or concealment' as used in the information mean removal, deposit or concealment from a place where the commodity is required by law to be kept so that the Government may there inspect it and collect the tax thereon, such as a distillery, a bonded warehouse, or other place where intoxicating liquor is required by law to be kept until the tax thereon has been paid."

to which refusal said claimant duly excepted and its exception was allowed.

XV.

The Court erred in refusing to give the jury claimant's requested instruction #9, reading as follows:

> "You are instructed that the burden is upon the United States Government to show that the

intoxicating liquor was being removed, deposited or concealed with the intent to defraud the Government of a valid tax imposed upon the same before the automobile in question is subject to forfeiture and that the mere finding of intoxicating liquor in the car, on which intoxicating liquor no tax has been paid, is not sufficient to justify forfeiture of the automobile."

to which refusal said claimant duly excepted and its exception was allowed. [115]

XVI.

The Court erred in refusing to give the jury claimant's requested instruction #10, reading as follows:

"You are instructed that under the laws in force in the United States at the time the car in question was seized, it was unlawful for any person to manufacture or have in his possession intoxicating liquor and that there was no place at which any person manufacturing, selling or trafficking in intoxicating liquor could pay a tax on the same and there was no place where such liquor was required by law to be kept for the purpose of enabling the Internal Revenue Officers to inspect the same, collect taxes thereon and see that Internal Revenue Stamps were placed thereon."

to which refusal said claimant duly excepted and its exception was allowed.

XVII.

The Court erred in refusing to give the jury

claimant's requested instruction #11, reading as follows:

> "You are instructed that, in this case, the driver of the car at the time it was seized has been charged under the National Prohibition Act with the crime of transporting intoxicating liquor, that he has pleaded guilty to said charge and has been sentenced by this Court and that such action by the United States Government constitutes an election to proceed under the National Prohibition Act and said United States Government cannot now forfeit the automobile in question under the Internal Revenue laws, to wit, under Section 3450 United States Revised Statutes."

to which refusal said claimant duly excepted and its exception was allowed.

XVIII.

The Court erred in refusing to give the jury claimant's requested instruction #12½, reading as follows:

> "You are instructed that there is no presumption that the liquor found in the car at the time it was seized was being removed, deposited or concealed therein with intent to defraud the Government of any tax."

to which refusal said claimant duly excepted and its exception was allowed.

XIX.

The Court erred in refusing to give the jury claimant's requested instruction #14, reading as follows:

"You are instructed that the search-warrant issued to the United States Prohibition Agents was issued in aid of the enforcement of the United States Prohibition Act and not for the purpose of enabling the officers who seized the automobile in question to collect [116] taxes imposed under the Internal Revenue Act and that seizures made under such search-warrant cannot be the basis of an action to forfeit an automobile under the Internal Revenue Laws."

to which refusal said claimant duly excepted and its exception was allowed.

XIX.

The Court erred in refusing to give the jury claimant's requested instruction #15, reading as follows:

"You are instructed that under the National Prohibition Act the rights of innocent lienors or vendors who hold valid chattel mortgages or conditional sales contracts on an automobile used for the transportation of intoxicating liquor are protected. That the claimant in this case holds a valid conditional sales contract on the automobile in question. That there is a balance due said claimant in the sum of $794.08."

to which refusal said claimant duly excepted and its exception was allowed.

XX.

The Court erred in refusing to give the jury claimant's requested instruction #16, reading as follows:

"You are instructed that the Internal Revenue Act, to wit, Section 3450, under which the United States Government is proceeding in this case, has been repealed by the National Prohibition Act in so far as it provides for the forfeiture of vehicles used for the transportation of intoxicating liquor."

to which refusal said claimant duly excepted and its exception was allowed.

XXI.

The Court erred in refusing to give the jury claimant's requested instruction #17, reading as follows:

"You are instructed that the Internal Revenue Act under which the United States Government is proceeding in this case, to wit, Section 3450, United States Revised Statutes, has been repealed by the National Prohibition Act in so far as the same has any application to the rights of the Government to forfeit the automobile in question and that a forfeiture under said Act cannot be had in the present case."

to which refusal said claimant duly excepted and its exception was allowed.

XXII.

The Court erred in refusing to give the jury claimant's requested [117] instruction #20, reading as follows:

"You are instructed that the words 'deposit or concealment,' as used in the information, mean deposit or concealment of an article at

a place other than the place where it is required by law to be kept for the purpose of enabling the United States Government to collect the tax thereon, and that unless the automobile in question was at the time being used for such purpose, said automobile cannot be forfeited in this action."

to which refusal said claimant duly excepted and its exception was allowed.

XXIII.

The Court erred in refusing to give the jury claimant's requested instruction #21, reading as follows:

"You are further instructed that, under the laws of the United States of America, in force at the time the automobile in question was seized, there was no place where the intoxicating liquor claimed by the Government to have been found in this car was required to be kept for the purpose of enabling the United States Government to collect a tax thereon and your verdict must therefore be for the claimant."

to which refusal said claimant duly excepted and its exception was allowed.

XXIV.

The Court erred in refusing to give the jury claimant's requested instruction #22, reading as follows:

"You are instructed that, in determining whether the automobile in question was being used for the deposit or concealment of a commodity on which a tax had been imposed with in-

tent to defraud the government of such tax, you should determine whether the natural and probable consequences of the use to which the car was being put at the time alleged in the information would result in defrauding the government of a tax imposed upon the article alleged to have been concealed or deposited in the car and that unless you believe from the evidence that the government would have, in the ordinary course of events, collected a tax on such article if the article had not been deposited or concealed in the automobile, your verdict should be for the claimant and you should find the automobile not guilty."

to which refusal said claimant duly excepted and its exception was allowed.

XXV.

The Court erred in refusing to give the jury claimant's requested instruction #23, reading as follows:

"In the present case, unless the acts done by the driver of the automobile in question resulted in depriving the Government of taxes, which, except for the doing of such acts the Government would, in all probability, have collected, the doing of such acts as were done in this case would not be any evidence of an intent to defraud the Government of the tax imposed upon the commodity alleged to have [118] been found in the automobile in question; that is, unless the completion of the acts alleged to have been done would result in depriving the

Government of a tax which it otherwise would collect, the mere doing of the acts would not be evidence of any intent to defraud the Government of such tax."

to which refusal said claimant duly excepted and its exception was allowed.

XXVI.

The Court erred in refusing to give the following instruction requested by the claimant:

"That if the doing of an act, when completed, would not result in a fraud, then the doing of the act would not be evidence of an intent to defraud."

and further erred in refusing to give the following instruction requested by the claimant:

"That if the doing of an act, when completed, would not result in defrauding the government out of any tax, then the doing of the act would not be evidence of an intent to defraud the Government of any such tax."

to which refusals the claimant then and there duly excepted and its exceptions were allowed.

XXVII.

The Court erred in signing and entering the decree herein upon the verdict of the jury.

WHEREFORE, claimant prays that the judgment and decree of the court be reversed, vacated and set aside and that the district court be directed to dismiss said cause, or, in the alternative, that a new trial be granted said claimant.

GRINSTEAD, LAUBE & LAUGHLIN and
THOMAS E. DAVIS,
Attorneys for Claimant.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Jan. 30, 1925. Ed. M. Lakin, Clerk. By S. M. H. Cook, Deputy. [119]

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* * * * * * * * *

ORDER GRANTING WRIT OF ERROR AND FIXING AMOUNT OF BOND.

This cause coming on to be heard in the courtroom of the above-entitled court in the city of Seattle, Washington, upon the petition of the claimant, Port Gardner Investment Company, a corporation herein filed, praying the allowance of a writ of error to the United States Circuit Court of Appeals for the Ninth Circuit, together with the assignment of errors also herein filed in due time, and also praying that a transcript of the record and proceedings and papers upon which the judgment herein was rendered, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit, and that such other and further proceedings may be had as may be proper in the premises.

The Court having duly considered the same does hereby allow the said writ of error prayed for, and it is ORDERED that the amount of bond to be given by said plaintiffs be and the same is hereby fixed at Four Hundred Dollars ($400.00).

Dated this 30 day of Jan., 1925.

EDWARD E. CUSHMAN,
Judge.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Jan. 30, 1925. Ed. M. Lakin, Clerk. By S. M. H. Cook, Deputy. [120]

SUPERSEDEAS AND COST BOND.

KNOW ALL MEN BY THESE PRESENTS that Port Gardner Investment Company, a corporation, as principal, and Fidelity and Deposit Company of Maryland, a corporation, organized under and by virtue of the laws of the State of Maryland, authorized to become surety on bonds and undertakings required by the laws of the United States, as surety, are held and firmly bound unto the United States of America, in the sum of Four Hundred Dollars ($400.00), lawful money of the United States, to be paid to it or its successors or assigns, for which payment well and truly to be made, we bind ourselves, and each of us, jointly and severally, and each of our successors and assigns by these presents.

WHEREAS, the above-named Port Gardner Investment Company, a corporation, has prosecuted a writ of error to the United States Circuit Court of Appeals for the Ninth Circuit, to reverse the judgment of the District Court of the United States for the Western District of Washington, Northern Division, in the above-entitled cause;

NOW, THEREFORE, the condition of this obligation is such that if the above-named Port

Gardner Investment Company, a corporation, shall prosecute its writ of error to effect, and answer all damages and costs, if they fail to make good their plea, and abide by and perform whatever decree which may be rendered by said United States Circuit Court of Appeals for the Ninth Circuit in said cause, or on the mandate of said Circuit Court of Appeals, by the court below, then this obligation shall be void; otherwise to remain in full force and effect.

IN WITNESS WHEREOF, the said principal and surety have caused this instrument to be executed by their respective agents and attorneys thereunto duly authorized this 30th day of January, 1925.

PORT GARDNER INVESTMENT COMPANY.

By GRINSTEAD, LAUBE & LAUGHLIN and THOMAS E. DAVIS.

Its Attorneys.

FIDELITY AND DEPOSIT COMPANY OF MARYLAND.

[Seal] By HARRY C. MILLER,

Atty.-in-fact. [121]

The within bond is approved, both as to sufficiency and form, this 30 day of January, 1925.

EDWARD E. CUSHMAN,

Judge.

O. K.—J. W. HOAR,

Asst. U. S. Atty.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern

Division. Jan. 30, 1925. Ed. M. Lakin, Clerk. By S. M. H. Cook, Deputy. [122]

PRAECIPE FOR TRANSCRIPT OF RECORD.

To Ed. M. Lakin, Clerk of the Above-entitled Court:

For a review of this cause on a writ of error sued out by the claimant herein, please prepare, certify and transmit to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit a complete transcript of the record herein, including the following (omitting all captions except that of the citation and writ of error):

1. Libel of information.
2. Answer of claimant.
3. Claim of claimant.
4. Instructions requested by claimant.
5. Verdict.
6. Decree.
7. Stipulation extending time for preparing and serving bill of exceptions.
8. Order extending time for preparing and serving bill of exceptions.
9. Bill of exceptions.
10. All exhibits introduced in evidence by either party.
11. Assignment of errors.
12. Petition for order allowing writ of error and fixing amount of bond.
13. Order granting writ of error and fixing amount of bond.

14. Bond.
15. Writ of error.
16. Citation.
17. This praecipe.

—and with said transcript transmit the original writ of error, the original citation.

GRINSTEAD, LAUBE & LAUGHLIN and
THOMAS E. DAVIS,
Attorneys for Claimant.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Jan. 30, 1925. Ed. M. Lakin, Clerk. By S. M. H. Cook, Deputy. [123]

CERTIFICATE OF CLERK U. S. DISTRICT COURT TO TRANSCRIPT OF RECORD.

United States of America,
Western District of Washington,—ss.

I, Ed. M. Lakin, Clerk of the United States District Court for the Western District of Washington, do hereby certify this typewritten transcript of record, consisting of pages numbered from 1 to 303, inclusive, to be a full, true, correct and complete copy of so much of the record, papers and other proceedings in the above and foregoing entitled cause as is required by praecipe of counsel filed and shown herein, as the same remain of record and on file in the office of the Clerk of said District Court, and that the same constitute the record on writ of error to the said United States Circuit Court

of Appeals for the Ninth Circuit from the United States District Court for the Western District of Washington.

I further certify the following to be a full, true and correct statement of all expenses, costs, fees and charges incurred and paid in my office by or on behalf of counsel for claimant, for making record, certificate or return to the United States Circuit Court of Appeals for the Ninth Circuit in the above-entitled cause, to wit: [124]

Clerk's fees (Sec. 828, R. S. U. S.) for making record, certificate or return, 303 folios at 15¢	$ 45.45
Certificate of Clerk to transcript of record, 4 folios at 15¢	.60
Seal to said certificate	.20
Total	$ 46.25

I hereby certify that the above cost for preparing and certifying record, amounting to $46.25 has been paid to me by counsel for plaintiff in error.

I further certify that I hereto attach and herewith transmit the original writ of error and citation on writ of error issued in this cause.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court, at Seattle, in said District, this 16th day of February, 1925.

[Seal] ED. M. LAKIN,
Clerk of the United States District Court, Western District of Washington. [125]

In the District Court of the United States for the Western District of Washington, Northern Division.

No. 8861.

UNITED STATES OF AMERICA,

Libelant,

vs.

ONE JEWETT SEDAN AUTOMOBILE, Washington License #178080, Engine Number 44079, and Tools and Accessories, and LUTHER L. NEADEAU,

Libelees;

PORT GARDNER INVESTMENT COMPANY, a Corporation,

Claimant.

* * * * * * * * *

WRIT OF ERROR.

United States of America,—ss.

The President of the United States of America to the Judges of the District Court of the United States for the Western District of Washington, Northern Division, GREETING:

Because in the record and proceedings, as also in the rendition of the judgment of the plea which is in the said District Court before you, between United States of America, Libelant, One Jewett Sedan Automobile, Washington License #178080, Engine Number 44079, and Tools and Accessories, and Luther L. Neadeau, Libelees, and Port Gard-

ner Investment Company, a corporation, Claimant, a manifest error hath happened, to the great damage of said Port Gardner Investment Company, a corporation, as is said and appears by the petition herein, we being willing that such error, if any hath been, should be duly corrected and full and speedy justice done to the party aforesaid in this behalf, do command you, if any judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings [126] aforesaid, with all things concerning the same, to the Justice of the United States Circuit Court of Appeals for the Ninth Circuit at the courtroom of said court in the city of San Francisco, in the State of California, together with this writ, so that you have the same at said place before the Justice aforesaid on the —— day of ——, 1925, that the record and proceedings aforesaid being inspected the said Justice of said Circuit Court of Appeals may cause further to be done therein to correct that error, what of the right and according to the law and custom of the United States should be done.

WITNESS the Honorable WILLIAM H. TAFT, Chief Justice of the Supreme Court of the United States, this 30th day of January, in the year of our Lord one thousand nine hundred and twenty-five and of the Independence of the United States the one hundred and forty-ninth.

ED. M. LAKIN,

Clerk of said District Court of the United States, for the Western District of Washington.

The foregoing writ is hereby allowed.

EDWARD E. CUSHMAN,
United States District Judge for the Western District of Washington.

Copy of within writ of error received and due service of same acknowledged this 30 day of Jan. A. D. 1925.

THOS. P. REVELLE,
J. W. HOAR,
Attorneys for Libelant.

Filed in the United States District Court, Western District of Washington, Northern Division. Jan. 30, 1925. Ed. M. Lakin, Clerk. By S. M. H. Cook, Deputy. [127]

In the District Court of the United States for the Western District of Washington, Northern Division.

No. 8861.

UNITED STATES OF AMERICA,
Libelant,

vs.

ONE JEWETT SEDAN AUTOMOBILE, Washington License #178080, Engine Number 44079, and Tools and Accessories, and LUTHER L. NEADEAU,
Libelees;

PORT GARDNER INVESTMENT COMPANY, a Corporation,
Claimant.

* * * * * * * * *

CITATION ON WRIT OF ERROR.

United States of America,—ss.

To the United States of America, GREETING:

You are hereby cited and admonished to be and appear at the term of the United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the city of San Francisco, State of California, on the 1st day of March, 1925, pursuant to a writ of error filed in the Clerk's office of the District Court of the United States, for the Western District of Washington, Northern Division, wherein United States of America is libelant, One Jewett Automobile, Washington License #178080, Engine Number 44079, and Tools and Accessories, and Luther L. Neadeau, libelees, and Port Gardner Investment Company, a corporation, is claimant, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Dated this 30th day of Jan., A. D. 1925.

EDWARD E. CUSHMAN,

United States District Judge for the Western District of Washington.

Service of foregoing and receipt of copy acknowledged and admitted this 30th day of January, 1925.

J. W. HOAR,

Atty. for Libelant.

Filed in the United States District Court, Western District of Washington, Northern Division.

Jan. 30, 1925. Ed. M. Lakin, Clerk. By S. M. H. Cook, Deputy. [128]

[Endorsed]: No. 4501. United States Circuit Court of Appeals for the Ninth Circuit. Port Gardner Investment Company, Plaintiff in Error, vs. United States of America, Defendant in Error. Transcript of Record. Upon Writ of Error to the United States District Court of the Western District of Washington, Northern Division.

Filed February 20, 1925.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.